

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 14, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>RS22454</u>	Relating to Public Employee Retirement System (PERSI)	Don Drum, Executive Director, PERSI
<u>RS22372</u>	Relating to Clarification on the Definition and Implementation of Holiday Paid Leave	David Fulkerson, Interim Administration, Division of Human Resources
<u>RS22367</u>	Relating to Veterans' Preference Points	Donna Weast, Division of Human Resources
<u>RS22399</u>	Real Estate Commission - Adds Definition for "Regular Employee"	Jeanne Jackson-Heim, Real Estate Commission
<u>RS22406</u>	Relating to Real Estate Continuing Education	Jeanne Jackson-Heim, Real Estate Commission
<u>Docket No. 07-0106-1301</u>	National Electrical Code	Steve Keys, Deputy Administrator of Operations, Division of Building Safety
<u>Docket No. 07-0311-1301</u>	Rules Governing Manufactured Mobile Home Industry Licensure	Steve Keys, Deputy Administrator of Operations, Division of Building Safety
<u>Docket No. 07-0501-1301</u>	Rules of the Public Works Contractor's Licensure Board	Steve Keys, Deputy Administrator of Operations, Division of Building Safety

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 14, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt, Ward-Engelking

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed everyone to the first meeting of the Commerce & Human Resources Committee (Committee) meeting and welcomed **Senator Ward-Engelking** to the Committee. He mentioned there would be no Committee meeting on January 16, 2014 because Senator Lodge had encouraged all to attend another meeting from 1:30-3:00 p.m. in the Lincoln Auditorium, to hear a presentation entitled, "Justice Reinvestment in Idaho". He mentioned there were many things to be done this session and said the Committee had a full agenda. He welcomed and thanked Committee Secretary, Linda Kambeitz.

INTRODUCTIONS: **Chairman Tippetts** said that if any member was going to be absent, there was a form that had to be filled out from the Secretary of the Senate. He said they have not done that in the past, but those were the instructions.

Chairman Tippetts introduced the new Page, Hunter Markus, and asked him to tell the Committee about himself. **Hunter Markus** said he came from a family of eight; he is a senior at Centennial High School; he plays basketball, does high jump and track, and he loves playing the piano. He said his family owns Sure Clean Car Wash in Eagle and that he works there on the weekends. He thanked all of the Senators and secretaries for giving him the opportunity to be a Page. He said he heard about the position when he was at Boys' State this past summer and at the beginning of his senior year in his Government class, he became very interested in the organization and function of government. He said being a Page was a lot of fun, and he thanked the Committee for having him.

Chairman Tippetts said there were many benefits for students who become Pages, and he hoped the experience served them well throughout their lives.

RS 22454

Relating to the Public Employee Retirement System (PERSI) was presented by **Don Drum**, Executive Director of PERSI. He said the Routing Slip (RS) amended Idaho Code § 59-1306, to include additional references to the Internal Revenue Code (IRC), to remove an archaic reference to an effective date, to make technical corrections and to clarify that a marriage must be valid or must be recognized under the laws and constitution of the State of Idaho. He said that on November 20, 2012 PERSI received a determination letter from the Internal Revenue Service (IRS) for the PERSI Base Plan. A determination letter was the IRS's statement that the terms of the plan (PERSI's statutes and rules) were in accordance with applicable federal statutes to qualify the plan as a governmental pension plan under Section 401 (a) of the IRC. **Mr. Drum** said the determination letter was issued subject to PERSI making certain statutory and rule changes. This bill addresses the statutory changes.

He further stated that Idaho Code § 59-1306, states that the plan will be administered in accordance with certain enumerated subsections of § 401(a) of the IRC. This bill will add references to subsection (36) and subsection (37) of § 401(a) of the IRC. Subsection (36) was added to the IRC in 2006 and subsection (37) was added in 2008.

- Subsection (36) provides that a plan is not disqualified if it allows for a distribution to a person age 62 or older who is not separated from employment.
- Subsection (37) requires that the qualified plan treat a participant who dies while performing qualified military service as if he had resumed work and then died. The PERSI plan does that in Idaho Code § 59-1302(23) (definition of military service).

The bill will also add a statement that the plan shall be administered in accordance with the pre-Employee Retirement Income Security Act (ERISA) vesting requirements of § 411(e)(2) of the Internal Revenue Code. That section requires 100 percent vesting upon a plan termination or upon complete termination of all employer contributions.

Mr. Drum explained that these sections of the IRC already apply to PERSI, as a qualified governmental retirement plan. The bill clarifies that by adding references to them.

The bill also adds a new subsection (2) to provide that for Idaho income tax purposes, a marriage must be one that is valid or recognized under § 28, article III of the Idaho Constitution and defined in Idaho Code § 32-201 or as recognized under Idaho Code § 32-209. Subsection (2) is not required by the determination letter.

The potential impact of the amendments to the General Fund and retirement system funds is considered negligible, he said.

Chairman Tippets and **Mr. Drum** discussed line 26 of the RS and the idea that this section was not required by the IRS, but was requested by the Governor's office. **Mr. Drum** explained the intent of the Governor's office was to make this section comply with all sections of Idaho Code. They talked about a rule in the tax code that also deals with marriage, whether this statute was codifying what was already in rule as far as filing income taxes in the State of Idaho, and how marriage related to that. **Senator Goedde** said he was trying to figure out if we were dealing with the tax code, but why with PERSI? He said he understood dealing with a death benefit or pension rights for a spouse, but he didn't think either one dealt with taxes. **Joanna Guilfoxy**, Deputy Attorney General, said she was not sure she had a better answer than Director Drum. She reiterated this was at the request of the Governor's office and it was not part of the determination letter. She said she could not see a direct immediate impact on the PERSI plan.

Senator Cameron said he did not think the RS was impacting the tax code, but he thought the impact was with the plan's conformity. He said he thought subsection (2) was a public policy decision as to whether or not benefits should be included based on the definition of marriage. He said it has been the standing policy of the State, and that is how we define marriage or marital benefits as it relates to the PERSI plan.

MOTION:

Senator Cameron moved to print **RS 22454**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

Relating to Clarification on the Definition and Implementation of Holiday Paid Leave was presented by **David Fulkerson**, Interim Administrator, Division of Human Resources. He said that a legislative audit finding suggested an inconsistent application of holiday paid leave for State employees working a flexible schedule versus those working a traditional work schedule. Idaho Code provisions pertaining to holiday paid leave were written with a traditional work schedule in mind. There have been collaborative attempts by the State Controller's Office (SCO), Division of Financial Management (DFM), and the Division of Human Resources (DHR) to develop a consistent and equitable policy for non-traditional work schedules. However, to facilitate statewide consistency in paid holiday leave, an amendment to Idaho Code is recommended.

Mr. Fulkerson said this bill provides clarification on the definition and implementation of holiday paid leave for employees on a flexible schedule such as: agency-required work schedules, employee-requested work schedules, and for part-time employees. It also adds language specifically paying non-benefited exempt employees for hours worked on a holiday.

There will be a one-time cost in the fiscal year (FY) 2015 DHR budget of approximately \$12,000 for programming changes to the State's payroll system. It is expected that agencies will manage and pay holiday leave and holiday hours worked within their existing budgets.

Mr. Fulkerson said the proposed legislation addressed two main topics: (1) Paid holiday leave, which defines the amount of leave for full-time employees working flexible (non-traditional) schedules (for example, a four-day, ten-hour schedule work week), as well as differentiating between agency-required work schedules and employee-requested work schedules, and for part-time employees and; (2) the exception to the overtime definition for time worked on a holiday for non-benefited Fair Labor Standards Act (FLSA) exempt employees.

He talked about flexible schedules, which, he said, was the most important piece. DHR tried to differentiate between the agency-required work schedules and employee requested work schedules. Employees who work full-time flexible employer mandated schedules, (i.e., a four day, ten-hour schedule) and a holiday falls during that time, the holiday pay would be for the hours of their regular schedule (i.e., ten hours instead of eight). Employees on the four day, ten-hour schedule would have the choice of modifying their work schedule that week and work five eight-hour days or use some of their accrued vacation or compensatory time to make up the difference.

He gave some background information and said when benefitted exempt employees work on a holiday, there was no mechanism to pay them for working on the holiday. The definition of "overtime" excludes them from getting paid for the holiday. Employees are receiving compensatory time. If an employee had a 16-hour week and there were holiday hours during the same week, the employee was not getting paid for the holiday. This revision was an attempt to fix that issue.

In order to qualify for paid holiday leave, an employee must contribute to PERSI (Chapter 13, Title 59) or the optional retirement program (Chapter 1, Title 33). He said this was not new and is currently in § 59-1603(1) and § 67-5302(22) of Idaho Code. He referred to the agency-required work schedule and that a full-time employee would receive eight hours of paid holiday leave during the pay period in which the holiday falls. However, if the agency required the employee to regularly work more than eight hours on a day on which the holiday occurred, they would receive eight hours of paid holiday leave. An employee-requested work schedule is when a full-time employee requests a schedule other than

the standard schedule identified by the employer. An employee who regularly worked more than eight hours on a day on which a holiday occurred, will receive eight hours of paid holiday leave. To complete the normal workweek of 40 hours, the appointing authority may require employees to work an alternate schedule during the work week in which the holiday occurred or allow them to use accrued vacation or compensatory time.

Part-time employees, he said, shall receive paid holiday leave equal to 20 percent of the employee's budgeted pay period hours divided by 2. They will receive a minimum of four hours, not to exceed eight hours of paid holiday leave. This is currently addressed in DHR Rule 073.04.c and 073.04.e. If this legislation is adopted, DHR would need to update these rules.

Mr. Fulkerson said employees who are eligible for paid holiday leave and who work on a holiday, receive both paid holiday leave and overtime compensation, pursuant to § 59-1607 and § 67-5328 of Idaho Code. If they work on either the designated or actual holiday, they will receive compensatory time or cash compensation for either day; provided, however, if they work both days, they shall only receive paid holiday leave and overtime compensation for one of the days. There is no change for executive employees. Non-benefited, non-exempt employees, who work on a designated or actual holiday, shall receive cash compensation or compensatory time at the rate of one-and-one-half hours for each hour worked. An employee who is required to work both days shall receive overtime compensation for one of the days.

Mr. Fulkerson referred to page 4, line 27 of the Routing Slip (RS) regarding the "overtime work" definition striking the words "and time worked on holidays". He said overtime work meant time worked in excess of 40 hours in a period of 168 consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of 160 hours in a period of 28 consecutive days, shall constitute overtime work. Employees may be paid overtime for specific hours worked in addition to their normal schedules upon emergency declaration by the Governor or with the approval of the appointing authority and the Board of Examiners. Overtime work also means time worked on holidays. Employees who do not contribute to PERSI or to the optional retirement program are ineligible for paid holiday leave. These non-exempt employees, who work on a designated or actual holiday, will receive compensation or compensatory time at the rate of 1.5 hours for each hour worked. The State of Idaho is more generous than the Fair Labor Standards Act (FLSA) which requires that we include overtime as time worked on holidays. The State also provides compensatory time for exempt employees. **Mr. Fulkerson** said that exempt employees who do not contribute to PERSI or to the optional retirement system, who work on a designated or actual holiday, will receive compensatory time at the rate of one hour for each hour worked. This RS is an attempt to fix that problem.

He talked about flexible schedules, the differentiation between required work schedules for the good of the organization, those working full-time and employer-mandated schedules. He said this RS puts more clarity into the current law.

Senator Guthrie asked if this was done in a case where an employee worked on a recognized holiday. **Mr. Fulkerson** said employees were eligible for 10 days of holiday pay if the employee paid into the retirement plan. If one of these employees worked both holidays, the DHR wanted to make sure employees were not paid double. **Senator Guthrie** wanted to know how we paid employees in the past if the agency required certain working hours and the employee had been working 10 or 12 hours. **Mr. Fulkerson** said the agency gives employees eight or ten hours for the holiday and this provides clarity. He said we have five eight-hour working days and modified four ten-hour days. This is an attempt to make sure employees are treated consistently and fairly, so they don't have to modify their schedules.

Senator Cameron asked if Mr. Fulkerson could provide a little better answer to the fiscal impact this bill would have. What would the public policy change be and how would it impact each agency or the State? He commented it seemed it would cost more and he wanted to know how much more. **Mr. Fulkerson** said he got an estimate from the Idaho State Police of \$137,000 for a year and they said they would have enough, but it was hard to identify an actual number. In the past, full-time employees would get extra hours, then that would be extra compensatory time they would accrue. **Senator Cameron** said he wanted more details to be provided.

Mr. Fulkerson and **Senator Cameron** had a conversation about clarifying the idea that exempt employees were eligible for the holiday benefit even though they were salaried. They also talked about what was happening in practice and the attempt to clean up the language in the statute so consistency was applied. They discussed the definition of a non-exempt employee, what was included in that definition and how overtime was applied.

Senator Guthrie asked if there was an additional cost, and if Mr. Fulkerson thought the fiscal amount of \$12,000 was fair. He indicated he was struggling with the credibility of the \$12,000 in the fiscal note in the Statement of Purpose (SOP). **Mr. Fulkerson** said there was additional coding on the State Controller's System for these costs.

Chairman Tippetts stated that if the RS was introduced by the Committee, the note could be amended for the cost to agencies on the list. **Mr. Fulkerson** said that information could be updated if that was the desire of the Committee. At some point, he said, the employer would be liable to pay an employee if the employee decided to leave.

MOTION:

Vice-Chairman Patrick moved to print **RS 22372**. **Senator Schmidt** seconded the motion. **Senator Cameron** stated he was wondering if the maker of the motion was desirous of suggesting that there be an improved fiscal note that would include more detail as to the cost. Both **Senators Patrick** and **Schmidt** agreed. The Committee would introduce the RS with a fiscal note. The motion carried by **voice vote**.

RS 22367

Relating to Rights and Privileges of Veterans and the State Employee Personnel System was presented by **Donna Weast**, Division of Human Resources. She explained that this legislation was to provide clarity for the application of veterans' preference points added to the passing score of an examination for veterans applying for classified positions. Preference for veterans is given by awarding five points (for veterans who have been discharged or released under honorable conditions and have served on active duty a minimum of 180 consecutive days) or 10 points (for disabled veterans who separated under honorable conditions and have served on active duty in the armed forces and have a current service-connected disability of 10 percent or more or are receiving compensation related to a service-connected disability) to the final passing exam score. The term "percentage" before the word "points" creates a lower outcome if the total possible exam score is less than 100 points. There is no fiscal impact.

Senator Lakey asked if a percentage and the application of points would be the same regardless of how many questions were on the test. **Ms. Weast** said the questions varied and the value varied with the test that was given. She said it did not matter how many questions were on the test, as most exams added up to 100 points. **Senator Schmidt** asked if functional ability was used to determine the disability of a veteran. He asked if the disability was usually a medical determination if the veteran shared the information. **Joe Weber**, Human Resources Specialist with the Division of Human Resources, said a vet would self-refer. **Senator Schmidt** asked for a clarification of the statute that referenced a marriage valid in the State of Idaho. **Ms. Weast** said this was not something they were going to change or address.

MOTION:

Senator Guthrie moved to print **RS 22367**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 22399

Relating to Idaho Real Estate License Law was presented by **Jeanne Jackson-Heim**, Real Estate Commission. She indicated this was housekeeping legislation that added a definition for "regular employee", modified the definition of "state or jurisdiction" to include the District of Columbia, and clarified references to day and time. There was no impact to the General Fund, the agency's Special Real Estate Account, or to any state or local political subdivision.

A discussion ensued with **Ms. Jackson-Heim** and **Senators Goedde** and **Lakey** about paying a regular employee a commission and the definition of a regular employee. They talked about how most real estate agents receive a commission and not an hourly wage. **Ms. Jackson-Heim** said the exemption would be if an owner of a property wanted to sell and they happened to be a Limited Liability Corporation (LLC) or a corporation who owned the property. If they had an employee who worked for them who was helping to market the property, that person would not be required to have a real estate license. They also discussed the differences between written and oral contracts. **Ms. Jackson-Heim** said the Real Estate Commission wanted to clarify that they were using the tax definition to define "regular employee".

MOTION:

Senator Goedde moved to print **RS 22399**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

Relating to Idaho Real Estate License Law was presented by **Jeanne Jackson-Heim**, Real Estate Commission (Commission). She said this legislation would enhance the quality and relevance of continuing education coursework required to renew a real estate license. Actively licensed brokers and salespersons would be required to complete the Commission Core Course every year, instead of once every two years. The additional Core Course requirement would be offset by a reduction in the required number of continuing education hours.

Additionally, all new salespersons would be required to complete the Commission's "Post License Course" before renewing the license on active status. The new salesperson Post License Course requirement would be in lieu of the continuing elective education requirement. This would complement the education that would be taken prior to becoming licensed and would reinforce such topics as preparing the contract forms, ethics and professionalism, and agency law.

The Commission proposes eliminating obsolete references to challenge exams for continuing education, since the challenge exams have not been used for a number of years.

She said this legislation also added a training requirement for course providers, making the certification program consistent for both certified instructors and certified providers.

Finally, **Ms. Jackson-Heim** said, the legislation expands the types of real estate education for which the Commission may use civil penalty fine money. The license law specified how funds could be spent and presently, they are restricted to education purposes for existing Idaho licensees. The Commission proposes expanding the use very slightly so the funds can also be used for pre-license education for potential licensees. There would be no fiscal impact to the General Fund, the agency's Special Real Estate Account, or to any state or local political subdivision.

MOTION:

Senator Goedde moved to print **RS 22406**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0106-1301**

National Electrical Code (NEC) Rules was presented by **Steve Keys**, Deputy Administrator, Division of Building Safety (DBS). He said the NEC has served as the backbone for the enforcement of electrical safety requirements in Idaho since the formation of the Idaho Electrical Board (Board) and the electrical program in 1947. Since that time, the adoption of newer versions of the NEC has been accomplished on a relatively routine basis up until the last few versions. During the last hearing before this Committee, the 2011 NEC was not adopted due to a lack of a demonstrated consensus among affected parties. He said this docket reflects the decision of the Board to adopt the 2014 version of the NEC.

He said he was pleased to be able to inform this Committee that the DBS, the Board, and the electrical industry took that failure to heart, and have worked tirelessly through the negotiated rulemaking process to produce a docket that was widely supported and represented a "consensus" document. The NEC Board and DBS took the lead in attempting to notify all concerned parties that the Board chose to undertake the adoption of the 2014 NEC and invited all interested parties and groups to participate in public meetings to gather input that would result in a "consensus" result.

Mr. Keys said the group became known as the "Electrical Code Collaborative",

and met many times in the DBS Meridian office with videoconferencing links to offices in Pocatello and Coeur d'Alene, allowing for wide geographic participation. Ultimately, at least 55 participants in the process became regulars and were considered "members" of the collaborative. These members represented all facets of the electrical industry, the homebuilding industry, regulatory authorities, realtors, and members of the Idaho Legislature. He said he believed the end result spoke for itself, and represented the "collaborative consensus" envisioned by the Legislature when the negotiated rulemaking process was established. In the end, nobody got everything they wanted in the new code, but all involved felt the end result in adopting the 2014 NEC with significant amendments, mitigated the cost impacts on residential construction and was the best path for the State of Idaho.

Mr. Keys said he wanted to acknowledge the National Fire Protection Association (NFPA), the code's publisher, for their support of the collaborative process, and their reinforced support for the training of inspectors statewide who were expected to enforce its provisions.

Mr. Keys, clarified for the benefit of the Committee and at the request of **Chairman Tippetts**, the deletion of information referenced in the electrical code on page 7 of the rules. **Chairman Tippetts** questioned page 8 of the rules dealing with Arc Fault Circuit Interruptor (AFCI) protection. As he understood the history, they were exempt from being installed in many rooms, except the bedrooms. He said he expected to see something that said the other areas of the building would be exempt. He asked if there was some other place in the rules that showed the rest of the residence was exempt from arc fault interrupters. **Mr. Keys** said there was a list of exemptions that was existing language and only limited to outlets in bedrooms, which reflected the consensus of the group. **Mr. Keys** said this requirement went back to the 2005 Code.

Senator Lakey stated he had heard from a constituent in his district who felt that the proposed adoption of the 2014 version of the Code was not positive. He asked Mr. Keys how many other states still used the 2008 Code. **Mr. Keys** said he did not have an exact number, but, he said, a significant number of states have adopted the 2011 codes. He said multiple states, including Washington and Oregon that restricted language in the 2011 Code requiring additional AFCIs, have since allowed those exemptions to expire. **Senator Lakey** asked when the 2014 version was finalized. **Mr. Keys** said the 2014 Code was published last August and it was the consensus of the Board that they would rather work on the 2014 Code instead of the 2011 Code. **Senator Lakey** said that his constituent went to a meeting and wanted a copy of the draft version. Mr. Keys said at the time those meetings were going on, the final version was not available, but the pre-print version was available and everyone who participated had access to the changes.

Senator Goedde asked Mr. Keys if there was anything that he could provide for the Committee that would have an overview of the differences in the 2008 Code compared to the 2014 Code that was being proposed. **Mr. Keys** responded by saying that the bulk of the 2011 Code was devoted to reorganizing where everything was located in the Code. There were not a lot of technical changes. Most of the technical changes and the objections that were brought forward revolved around changes that either existed in the 2008 Code and that were exempted or changes that were reflected in the 2014 Code related to additional AFCIs and additional Ground Fault Circuit Interruptor (GFCI) requirements in kitchens and garages.

**PASSING OF
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick, who had just returned from another meeting.

Senator Goedde again asked if there was a document that compared the 2008 Code to the 2014 Code, so one did not have to read and compare the two. **Mr. Keys** said he had a document that highlighted the changes from the 2008 to the 2011 Code. **Senator Goedde** said the Committee was having a problem with skipping over a code edition. **Mr. Keys** said they were looking at training inspectors to make sure they understood all of the changes. He said he hoped the Committee would consider where they were in the 2011 Code situation last year and all that the Board did to build consensus. He said he relied upon the fact that there was not a lot of opposition saying the transition was a problem.

Senator Guthrie offered information that there were 32 states who were operating under the 2011 Code and 11 states under the 2008 Code. There was another state under the 2005 Code, and Washington, D.C. also operated under the 2005 Code. Local adoption was present in six states. He said it appeared no other state had adopted the 2014 Code according to the map on the internet that depicts which code each state has adopted. **Mr. Keys** said he did not think that information was correct. He said Iowa and Wyoming adopt the new version of the Code as soon as it is published and is in place. He further stated that traditionally Idaho is one of the first states to adopt new code. One advantage was that the Board, industry and everyone related, looked at everything in the Code. **Senator Guthrie** said he refuted the information supplied by Mr. Keys and that the information map on the internet was provided by the Legislative Services Office (LSO). **Vice-Chairman Patrick** asked what other states were adopting the 2014 Code. **Mr. Keys** said that Wyoming, Oregon and Washington would be adopting the Code. He said Nevada did not have a state electrical code.

Vice-Chairman Patrick said that as he understood it, the Code would be in effect July 1, 2014 and **Mr. Keys** said, "yes".

TESTIMONY:

Bob Scott, Chairman of the Idaho Electrical Board, said he has had experience in the field during the 1970s and that he was on the Board of Directors of the National Electrical Board. He said he was quite disappointed they could not get the 2011 Code passed, but they worked diligently on the 2014 Code. He said the draft form was available on-line prior to the hearings. For the most part, they had come to a conclusion that would meet the interests of all concerned parties. It was a unanimous vote of the Collaborative Committee to support the changes to the 2014 Code. He said the Collaborative Committee realized that it was more important to get the Code passed with amendments so they could move forward and get everyone trained.

Jeff Fitzlaw, Chapter Secretary, International Board of Electrical Inspectors, said he also sat on the committee in Oregon and Washington. He indicated Utah was associated with the building code and used an imbedded part. Montana will be working on the Code, and Alaska was working on the Code in August.

Senator Guthrie asked what the cost would be for updated code books. **Mr. Fitzlaw** said the cost through the supply houses was approximately \$89 and that his association offered them for over \$95 due to shipping costs.

Bill Hatch, Public Information Officer, Idaho Division of Building Safety, said he had visited the LSO website today, and the Electrical Code Coalition said there were 15 states in the process of adopting the 2014 Code.

Senator Guthrie asked if "in the process" meant the Code had been adopted. **Mr. Hatch** read the information from the website. **Senator Guthrie** said the only point he wanted to make was that he had not heard of any states that had officially adopted the 2014 Code. **Mr. Hatch** concurred.

Kelly Curry, representing himself, wanted to know why the Code had to be updated through the government because the Code should be standard. He shared his thoughts that electricity was standard in homes and he wondered if the changes were because of new products. **Vice Chairman Patrick** indicated the Code had to be updated because of new safety standards and new products. **Mr. Curry** wanted to know if there was a problem with safety in 2014 and stated that it seemed to him safety issues would have been corrected already. **Vice Chairman Patrick** reassured Mr. Curry that we have to be continually updating Code due to safety concerns.

MOTION:

Senator Schmidt moved to adopt **Docket No. 07-0106-1301**. He said the Committee had listened to a lot of testimony and was impressed with what had been accomplished. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

**DOCKET No.
07-0311-1301**

Rules Governing Manufactured Mobile Home Industry Licensure was presented by **Steve Keys**, Deputy Administrator of the Division of Building Safety (DBS). He said this docket was a follow-up to legislation from last session that eliminated the license requirement for manufactured/mobile home service companies. He said other changes were made to the definitions to align with definitions already contained in the governing statute and federal regulations. There were no questions from the Committee.

MOTION:

Senator Goedde moved to adopt **Docket No. 07-0311-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**Docket No.
07-0501-1301**

Rules of Public Works Contractor's Licensure Board was presented by **Steve Keys**, Deputy Administrator of Building Safety (DBS). He said this docket addressed changes in the administrative rule required to accommodate the submission of applications in a digital format. Previously, submissions in digital formats other than facsimile were banned by the rule. DBS, he commented, was constantly working to refine their application process to streamline data entry and facilitate quicker consideration of the applications, and they believe this change would enhance their process. The other changes in the rule were housekeeping in nature, except for those reflected in Section 03 on page 65. That change corrected language that could be misinterpreted to say that a licensee could operate indefinitely on an extension of time until a license was actually issued.

MOTION: **Chairman Tippetts** moved to adopt **Docket No. 07-0501-1301**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

Senator Cameron referred to the first docket, Docket No. 07-0106-1301, National Electrical Code, and said he wished to have his vote recorded. **Senators Cameron, Lakey** and **Guthrie** concurred and all were recorded as voting **nay**. **Senator Guthrie**, said for the record, that it appeared to him that LSOs data had been called into question earlier, and the point he was trying to make was that as of today no one was showing him a state that had adopted the 2014 Code, so he believed their data was correct.

Senator Martin wanted to recognize Director Kelly Pierce in the meeting room today. He said he had experience working with Judge Pierce on the Youth Advisory Committee nearly 50 years ago when he was a high school senior. He said because of Director Pierce, he was sitting in this chair today as a Senator.

PASSING OF GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts. **Chairman Tippetts** reminded the Committee there was no meeting on Thursday, January 16, 2014.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:55 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 21, 2014

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Annual Report for the Health Insurance Exchange	Amy Dowd, Executive Director, Your Health Idaho
DOCKET NO. <u>59-0103-1401</u>	Temporary Rule Review: IDAPA 59 - PERSI 59.01.03 - Contribution Rules for the Public Employee Retirement System of Idaho (PERSI)	Don Drum, Executive Director, PERSI
DOCKET NO. <u>59-0106-1301</u>	Pending Rules Review IDAPA 59 - PERSI 59.01.06 - Retirement Rules of PERSI	Don Drum, Executive Director, PERSI
DOCKET NO. <u>18-0104-1301</u>	IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE 18.01.04 - Rules Pertaining to Bail Agents	Tom Donovan, Deputy Director, Department of Insurance
DOCKET NO. <u>18-0123-1301</u>	18.01.23 - Rules Pertaining to Idaho Insurance Holding Company System Regulatory Act	Tom Donovan, Deputy Director, Department of Insurance

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 21, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m., welcomed everyone and went over the agenda.

PRESENTATION: **Steven Weeg**, Chairman of the Board, Your Health Idaho, provided the background of the creation of a marketplace for Idahoans, namely, Your Health Idaho (YHI). He said the Idaho Legislature gave YHI the duty of keeping local control of the Health Exchange (Exchange), which they have accomplished. YHI has prevented federal intervention in Idaho. He said the Exchange was working for Idahoans. Twenty thousand Idahoans have chosen to enroll in a plan and the number is growing. Through YHI, Idahoans have the resources available to make a choice that works for them. He said we are focused on thoughtfully completing our own Idaho-based technology solution. We will have an Idaho solution available for the 2015 enrollment period.

Mr. Weeg presented the annual report for YHI (the entire report can be found on the website: www.yourhealthidaho.org). He said that H 248 was passed in March 2013 as a means of limiting federal involvement in Idaho. One month after the legislation was passed, Governor Otter appointed a 19-member board (Board). They had no staff, funding, policies and procedures, organizational structure, or office. Each Board member brought a diversity of expertise and experience that let YHI move quickly and efficiently to set up a functioning exchange in under six months. He said that in keeping with the intent of the legislation, the Board adopted a mission statement, which fully illustrates their dedication to running an Idaho exchange. The mission statement states that the goal is to maintain control of Idaho's health insurance marketplace at a minimal cost to its citizens. The mission statement drives the decisions of the Board on a daily basis. **Mr. Weeg** said they were providing a much needed resource to thousands of Idahoans who wanted health insurance.

He talked about their accomplishments and said their success was in large part due to the flexibility afforded to them as a State-based Marketplace. He indicated that 20,000 Idahoans were enrolled. The staff was smaller and the grant funding was low compared with other state exchanges. In addition, a plan was identified for setting up our own marketplace for sustainability in 2016. Another accomplishment was the establishment of a website to act, for this first year, as a portal to the federal exchange. Idaho-based resources for consumers were created to make up for the shortcomings of the federal website, including tools to estimate tax credits, find consumer assistance and compare plans. A network of over 700 agents and brokers and 300 In-Person Assistors (IPA) was built to help Idahoans. The YHI completed their first financial audit.

Mr. Weeg pointed out that in comparison to federally managed states, Idaho was benefiting in many areas. He said that in particular, plans on the Exchange were regulated by the Idaho Department of Insurance; agents and brokers were the primary resource for consumers; and the initial consumer fee was 1.5 percent. In federally managed states, the consumer fees were set at 3.5 percent. **Mr. Weeg** said that the IPA undergo rigorous training and background checks.

Bylaws, governance policies and an organizational structure have been adopted to ensure oversight over the work of the Exchange. However, the YHI moved swiftly to create a governance structure and realized too late that their conflict of interests and procurement policies needed to be tighter. They made the necessary changes to ensure that their organization would not make the same missteps in the future.

Mr. Weeg said YHI sought security verification and has confirmed with the Director of the Center for Consumer Information and Insurance Oversight (CCIO) that all "live" functions of the website have passed the same security testing as the Medicare system. The remaining testing will be for functions of the website that were not yet "live". In closing, he said they had a large challenge. He stated that they can be proud of the work done by the Board and the staff. He then introduced Amy Dowd.

Amy Dowd, Executive Director, Your Health Idaho, gave the second half of the presentation on the Annual Report of the Health Insurance Exchange. She thanked Chairman Weeg for his support. She said she wanted to share some important updates. She said the best news was that the enrollment numbers indicate that Idahoans are interested in the marketplace and they have chosen to enroll. She indicated the data showed that all age groups were participating and enrolling, including the "young invincibles", which they always worried would not be interested. People are finding value in the silver plans and interestingly 66 percent are choosing these plans.

She said that in looking at nearby states, our State-based Exchange was in line with or doing better. She attributed Idaho's success to the over 700 agents and brokers certified to enroll Idahoans in a plan. She noted the number of applications compared to enrollment in Idaho was a smaller margin than in many states. She attributed this to the resources they have made available to help Idahoans through the process. Idaho's marketplace is lean and moving at a much faster pace, but our numbers are still in-line with many of our peers. **Ms. Dowd** pointed out that when discussing enrollment, one area that deserved specific mention was the success of the IPA Program. She said these were the resources that were helping people every day. She pointed out that in contrast to federally managed states, Navigators (who took over the role of agents and brokers) fill the consumer assistance function and the federal government chooses the organizations, level of funding and level of security screening. The consumer call center was available in less than six weeks. The call center function allows YHI a pulse on the customer, agent and broker, and

IPA issues in Idaho. She said they found that communicating neighbor-to-neighbor was the best way to reach Idahoans. YHI conducts outreach efforts, which include enrollment and community events, radio ads, printed materials and digital media. They also use neighbors, local weekly newspapers, and sharing success stories on Facebook to disseminate information.

Ms. Dowd said there was much work to be done in the future. She said YHI was exercising due diligence for Idaho to avoid issues the federal marketplace experienced. She said that in building a plan for technology solutions, they knew they needed a vendor that would be the most efficient and sustainable in the long run. They have hired an independent expert who will review and audit the security of Idaho's technology solution. The technology vendor will supply security experts on site. The goal of YHI is that they will be self-sustaining by 2016 and will require no state funding. She said Idaho has successfully met all requirements to keep our Exchange controlled in Idaho.

Vice Chairman Patrick asked about the stringency of security background checks for those handling information. **Ms. Dowd** said the background checks were equivalent to that of the Federal Bureau of Investigation (FBI).

Senator Schmidt had a conversation with **Ms. Dowd** regarding the different categories outlined on the chart entitled, "Total Idaho Marketplace Applications, Eligibility, Determinations and Marketplace Plan Selections" on page 20 of the 2013 Annual Report. **Senator Schmidt** asked who received the product, as the numbers didn't all add up. He said that a little less than one-tenth of the applicants were eligible for Medicaid. He asked for an explanation of "pending other". **Ms. Dowd** said that "pending other" indicated a person's determination or where they were in the application process. She said a person's application may need follow-up information before being enrolled, for example. **Senator Schmidt** asked **Ms. Dowd** how many people needed financial assistance after consultation and the completion of the application in Idaho, compared to those in other states. **Ms. Dowd** said she would have to follow up on this comparison.

Senator Martin said he appreciated the fact that YHI mentioned some of the missteps.

Senator Lakey and **Ms. Dowd** had a conversation about the definition of open enrollment and tracking the effectiveness of events being held at libraries and other venues.

Senator Guthrie asked **Ms. Dowd** about providing more detail about contracts being awarded without the Board knowing. He asked if there was another contract for that same position and what the hourly rate was. **Ms. Dowd** said YHI had acknowledged they moved too quickly. She said they have put more control over executing policies in the future in order to prevent further problems. Idaho contractors are being used as much as possible. **Senator Guthrie** commented he was not sure his question was answered. He stated his other question was on the assessment fee of 1.5 percent and when the Board projected it would change. **Ms. Dowd** said the 1.5 percent assessment fee was determined by the Board and the intent of that amount was to build their reserves. That figure will need to be revisited on an annual basis. She said there was no determination as to what the fee would be in the future. She indicated that every decision she makes every day makes her think how this will effect long-term operating costs.

Senator Cameron asked **Ms. Dowd** about the cost drivers and what was needed so as not to increase the 1.5 percent assessment fee. She said that enrollment and the type of plan and premium that was being selected were cost drivers. The largest ongoing operational costs were the technology system and the call center. They

discussed that given the enrollment numbers, the choice of plans, and a desire to keep the size of the staff low, Idaho was doing rather well. **Senator Cameron** said because of this 1.5 percent assessment fee being less than projected, possibly the YHI would not increase this fee. **Ms. Dowd** said she did not want to speculate on a specific number. They also discussed how Idaho was better-suited to protect Idahoans' personal information because Idaho is a State run exchange.

Senator Cameron mentioned he wanted to add to Senator Schmidt's perspective about "pending other". He explained that meant that an applicant went through the process, but some of the individuals who started applying, started over. They also may be people who found out they were not eligible for any assistance. He added, we have a large number of individuals who need financial assistance. He said an agent would use YHI calculators, find out the person may not qualify so they would not go through the Exchange and would go to a carrier of their choice.

Senator Martin asked **Ms. Dowd** if she would define "personal assister", "navigator" and "agent" and asked what we were doing in Idaho. **Ms. Dowd** explained there was a clear distinction and said that an assister was only allowed to answer questions about what was needed to enroll, assist a person with self-enrollment, how to find the website or how to find help. She said that as soon as an individual asked for any advice about which plan to choose, that person was routed to a broker or agent. Idaho does not have "navigators" for 2014, but it is a federal requirement for the federal exchange.

Senator Lakey wanted to know how people were routed to a broker. **Ms. Dowd** explained there were several routes. One route was through a call center. Another would be a referral to an agent through a Personal Assister. She said there were tools on the website to assist an applicant. She indicated there was a website called www.healthcare.gov that helps individuals find a broker near where they live. The list of agents and brokers is rotated on the YHI website through an automated rotation system. However, the list depends on products the broker is licensed to sell. **Senator Lakey** and **Ms. Dowd** discussed the goal of YHI to open its door this fall, and significant milestones that had to occur before going live.

Chairman Tippetts talked about the national concern that there would be low enrollment of the young and healthy, and he commented that Ms. Dowd seemed somewhat pleased that 24 percent of enrollees were in the 18 to 24 age group. **Ms. Dowd** said Idaho's percentage was slightly higher than other states. She said that if the enrollments in that age category continue to grow, it is very encouraging. **Chairman Tippetts** thanked Steven Weeg and Amy Dowd for their presentation.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the review of the rules being heard.

**DOCKET NO.
59-0103-1401**

Contribution Rules for the Public Employee Retirement System of Idaho (PERSI) - Temporary Rule Review. **Don Drum**, Executive Director of PERSI, presented this docket. He said the reason for adopting this temporary rule was to delay a scheduled increase in contribution rates for employers and employees. He said actuarial valuation indicated it was appropriate to delay the currently scheduled increases. The next increase would begin July 1, 2015 rather than July 1, 2014. He said we were over 90 percent funded and below the 25 percent amortization level required by the State.

MOTION:

Senator Martin moved to approve **Docket No. 59-0103-1401**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0106-1301**

Pending Rules Review - Retirement Rules of PERSI. Don Drum, Executive Director of PERSI, presented this docket. He said the proposed rule added new Rule 174. As a qualified governmental plan under the Internal Revenue Code, PERSI is not subject to the Employee Retirement Income Security Act (ERISA), but is subject to the pre-ERISA (as of September 1, 1974) vesting requirements (26IRC § 411(e)(2)). This rule sets out PERSI's good faith interpretation of those requirements. There were no changes to the pending rule and it is being adopted as originally proposed. This rule was approved by the PERSI Board pursuant to the receipt of its determination letter from the Internal Revenue Service (IRS) that it is a qualified plan. The determination letter was subject to the adoption of this rule. The proposed rule was published in the September 4, 2013 administrative bulletin and PERSI received no questions or comments. The rule provides that if the plan is terminated or there is a complete stop to contributions, then no one who was not already a member is eligible to become a member; no further benefits accrue and the accrued benefits of all non-vested members shall vest.

MOTION:

Senator Goedde moved to approve **Docket No. 59-0106-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0104-1301**

Rules Pertaining to Bail Agents. Tom Donovan, Deputy Director, Department of Insurance (Department), presented this docket. He said the Department conducted negotiated rulemaking and the notice of intent to promulgate rules was published in the Administrative Bulletin on July 3, 2013, and also on the Department website notifying potential interested parties of a public meeting to be held on July 17, 2013. The public meeting was held. However, no one appeared. Additionally, a Department representative had discussed this rulemaking with bail industry groups and members in the spring to let them know their intent, following a January 2013 Idaho Supreme Court decision that prompted this rulemaking. The Department did not receive any requests for a hearing and did not receive any comments in response to the proposed rulemaking.

He detailed the background for rulemaking and said that the Department and a licensed bail agent, Two Jinn, Inc. (doing business as (DBA) Aladdin Bail Bonds), had a disagreement over the meaning of Idaho Code § 41-1042 that eventually went to the Idaho Supreme Court. The case name and citation to it are listed in the notices on pages 163 and 164 of the Committee's rule book. The substantive portion of the rulemaking appears on page 165 of the Commerce and Human Resources Committee Pending Rule Book and seeks to strike or repeal all of the language in section 016 as a result of the supreme court's decision. The statute, Idaho Code § 41-1042, enumerates certain collections and charges that are permitted by a bail agent and provides that other charges not set forth are prohibited. The Department had believed that the statute prohibited bail agents from charging or requiring as a condition of the validity of the bond that guarantors agreed to pay any surrender charges incurred. The bail agent sought to have the matter heard before the Director which was done via an outside hearing officer. The Department prevailed and also won on appeal to the district court. However, the bail company appealed the district court's ruling to the Idaho Supreme Court which reversed the order. The court said that requiring a party to contract to pay for bail surrender or apprehension costs was not the same thing as and not in violation of the statutory prohibition to "directly or indirectly" charge or collect any money or valuable consideration. **Mr. Donovan** said he knows of no opposition to this rulemaking, and the Department respectfully requests approval of this docket.

Chairman Tippetts and **Mr. Donovan** discussed changing the statute because of the ruling of the court. They talked about the view of the Department not being inconsistent with current statute and possible opposition. **Mr. Donovan** said that bail agents within the industry differ on issues. **Chairman Tippetts** asked about the cost of recovery and if that would drive up the cost of bail bonds. **Mr. Donovan** said he didn't think so, but he did say the Department thought there would be some abuses, but he was not aware of any recent examples. A bail bondsman could take advantage of some people when they entered into a bail transaction. The supreme court instituted a committee concerning bailbond issues and it seems that any legislative change would be through that committee.

Senator Cameron said that according to his recollection, there was significant opposition to this rule last year, and now there is none. **Mr. Donovan** said that the rule language was put into place in 2011. He said they have had a few agents that disagreed and that Senator Cameron was correct. They also discussed the public hearing that was held on January 17 and that no one appeared even though the Department had conducted the negotiated rule-making process and they had considerable contact with certain members of the bail industry. **Mr. Donovan** said they published the proposed rulemaking in October, which was a month before the pending rule, and received no comments about the proposed rulemaking. They received no feedback pro or con.

MOTION:

Chairman Tippetts moved to approve **Docket No. 18-0104-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0123-1301**

Rules Pertaining to Idaho Insurance Holding Company System Regulatory Act. **Tom Donovan**, Deputy Director, Department of Insurance (DOI), presented this docket. This rulemaking follows enactment last year of H 197 updating chapter 38, title 41 dealing with insurance company holding systems. Like H 197, this rulemaking reflects an update to an existing rule pursuant to the revised National Association of Insurance Commissioners (NAIC) model regulation; however, unlike H 197, the DOI is not repealing the old rule and rewriting it, but rather amending the existing rule.

Mr. Donovan said the Department again conducted negotiated rulemaking with the notice of intent to promulgate rules published on July 3, 2013. A public meeting was held on July 17, 2013. Additionally, the Department prepared a draft of the rulemaking for discussion at the public meeting and had it available at the meeting, and circulated it to interested parties just prior to the meeting. The Department also received written comments from the American Council of Life Insurers (ACLI) indicating that they supported adoption of the NAIC Model Holding Company Act, the National Association of Mutual Insurance Companies (NAMIC) related to exemption language and confidential treatment of Form F, and United Heritage Mutual Holding Company concerning various issues. At the July 17, 2013 public meeting, one interested party attended on behalf of two insurance companies and made a couple of brief comments on behalf of them to which the Department responded in a satisfactory manner. Following the public meeting, the Department continued to work with interested industry representatives on language for the proposed rulemaking, utilizing the earlier initial draft. In particular, the Department worked with United Heritage Mutual Holding Company, an Idaho company with subsidiary insurance companies in Idaho and Oregon that are licensed in multiple states. A number of points were covered, but the end result was that all questions and concerns were resolved prior to publication of the proposed rule. The notice of proposed rulemaking and substantive rule changes were published in the administrative bulletin on October 2, 2013. The notice of adoption of the pending rule without substantive changes was published in the December 4, 2013 Administrative Bulletin.

With those preliminary remarks, **Mr. Donovan** said he would like the Committee to turn their attention to page 168 of the 2014 pending rulebook where the changes begin. He said the first couple of pages of the substantive changes have some general rulemaking cleanup provisions, such as changing the title of the rule and including some of the standard sections to conform with normal agency rulemaking protocol. He gave an example in section 000, which added legal authority; 004 incorporation by reference; 005 office hours and mailing address, public records act compliance; and in section 010 definitions. He said these were not new definitions, rather they were the same as those that appear in section 014 of the current rule. However, he said the Department was moving them to section 010, again to conform with standard rulemaking citation protocol in section 011. He pointed out that throughout the entire rulemaking process, references to Form F were added which was the new Enterprise Risk Report. The Report provided for the enactment of H 197 last year. He asked the Committee to note in this section and throughout the rulemaking, that code reference corrections have been made to match the corresponding citation. Changes were made to recognize the electronic nature of filings with the Department within Chapter 38, Title 41 of Idaho Code on page 169 and page 170. New subsection 04 provides who is to file (the notice of acquisition of an insurer or Form A), and when a hearing may be held on a consolidated basis.

He said that on page 171 there's a new section 013 based on a new model rule, which is language that applies if a company cannot supply information on a particular form. The company is to identify the information, state why it cannot supply it and seek an extension of the deadline, requesting an extension of time for filing the information document or report to a specific date. The request for extension would be granted unless the Director, within 28 days, enters an order denying the request. At the bottom of the page he pointed out the definitions that were stricken which were simply moved to the new section 010. A new section 015 clarifies that the specific provision in the model act for investing in subsidiaries is in addition to any other authority in the insurance code. On page 172, new section 017 provides the express requirement to notify the Director of any changes in a Form A acquisition of control filing. New section 018 applies to a situation where there is an acquisition of a person that controls a domestic insurance company and how the names should be designated on Form A. At the very bottom of page 173 and the top of page 174 language has been taken out regarding providing an exemption because the exemption language is unnecessary and is already covered in the model act codified in Idaho Code § 41-3809(1) dealing primarily with foreign (i.e. domiciled in a state other than Idaho) companies. Striking this section also conforms the rule to the updated model regulation on page 175, applicable to a Form D (prior notice of a transaction among affiliated companies).

The language tracks the model regulation and is consistent with what has been requested by the Department in the past concerning specific items to be included in cost sharing services and management services agreements among affiliates. This included identifying the parties, setting forth the methods to allocate costs, requiring timely settlement of amounts due and not less frequently than quarterly, specifying that all books and records of the insurance company are to remain the property of the insurance company. It specifies that if the insurer is placed into receivership, that the Director steps into the shoes of the insurance company and is entitled to all the rights of the insurer under the agreement. All the books and records shall be immediately available to and turned over to the Director upon the Director's request in any receivership. The affiliate has no automatic right to terminate the agreement upon receivership and that the affiliate shall continue to maintain all systems programs or other infrastructure notwithstanding the Director stepping into the shoes of the insurance company. The affiliate is entitled to all the rights of the insurer under the agreement.

Mr. Donovan went on to say the new section 026 specifies that the ultimate controlling person of an insurer is required to file the Enterprise Risk Report. Form F, section 027, strikes some unnecessary language and clarifies that any request of the company for approval of extraordinary dividends shall include the information already contained in the rule. The second half of page 176 over to page 177 contains more cleanup and technical correction language. Starting in the middle of page 177 the actual forms are set forth that include updates consistent with the revised model language and cleanup of some of the existing language, with the addition of the new Form F at the end. On page 181, item 13 is contained within Form A where the acquiring party of an insurer is the ultimate controlling person and agrees to submit a Form F. Form B starts on page 183 (the annual registration statement) and on page 184 the lead-in language under item 4 is applicable where the ultimate controlling person is an entity. The new language at the end of the paragraph is where the ultimate controlling person is an individual. On page 186 there is new language under item 8 concerning financial statements and exhibits. Language at the top of the page applies if the ultimate controlling person is an entity and language at the bottom of the page concerns the financial statement when the ultimate controlling person is an individual. Existing language and some of the new language authorizes the director discretion to accept a different format for financial statements. The bottom of page 187 and page 188 provides for Form C, which is a summary of the registration statement and sets forth changes from the prior year. Form D, Prior Notice of Transaction starts midway through page 189 and includes a description of the transaction referenced in item 2. On page 190 there are two new provisions requiring notice, and a reference as to how the transaction meets the "fair and reasonable" standard referenced in the statute. Item 5 includes reinsurance pooling agreements within the scope of reinsurance transactions to be included. Item 6 concerning management agreements, service agreements and cost-sharing agreements, is also included. On page 192 there is a brief statement regarding the effect upon the insurer's policyholder surplus, whether the allocation methods are based on cost or market, and a statement regarding compliance with the NAIC accounting practices and procedure manual regarding expense allocation. Pre-Acquisition Notification Form E, regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in the State or by a Domestic Insurer, starts on page 193 and is a form that is very rarely applicable because, in most cases, an exemption set forth within the code for the requirement to file already exists. For example, if the transaction is already covered by a Form A filing and is for investment only and there's a disclaimer of control, or perhaps most typically where companies are already affiliated and have already filed, the new language expressly requires a statement regarding a determination whether the competitive standards set forth in the statute would be violated and if appropriate, justification. At the bottom of page 194 through page 196 the new Form F Enterprise Risk Report is listed, which, with a new requirement, is all new model language. Item 1 includes requirements for the ultimate controlling person to notify the Department of any listed areas that could produce enterprise risk not otherwise disclosed in the Form B including:

- material developments regarding strategy, internal audit filings, compliance or risk management,
- acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the holding company system,
- changes of shareholders exceeding 10 percent or more of voting securities,
- developments in investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system,
- the business plan and strategies for the next 12 months,
- any material concerns of the holding company system raised by a supervisory college (a collaborative grouping of insurance regulators where there are international operations) as provided for in the recently enacted Holding Company Act,
- negative movement or discussions with rating agencies; and
- identification of any material activity or development that could adversely affect the insurance holding company system.

Item 2 provides that if the registrant has not disclosed information under item 1, the registrant shall include a statement stating to the best of the registrant's knowledge, it has not identified enterprise risk subject to disclosure.

Mr. Donovan said he knew of no opposition to this rulemaking and that the Department requests that Docket No. 18-0123-1301 be approved.

MOTION: **Senator Goedde** moved to adopt **Docket No. 18-0123-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:56 P.M.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 23, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>RS22474</u>	Relating to Medical Retainer Agreements - Direct Primary Care	Senator Steven P. Thayne, Representative Lynn Luker
<u>RS22492</u>	Relating to the State Insurance Fund	Senator John W. Goedde
<u>RS22546</u>	Relating to Health Reimbursement Arrangements	Jim Hammond, Former State Senator & Former State Board of Education Member
DOCKET: <u>09-0130-1301</u>	Pending Rules IDAPA - 09 - DEPARTMENT OF LABOR 09.01.30 - Unemployment Insurance Benefit Administration Rules	Bob Fick, Department of Insurance, Communication and Legislative Affairs
DOCKET: <u>09-0135-1301</u>	IDAPA - 09 - DEPARTMENT OF LABOR 09.01.35 - Unemployment Insurance Tax	Bob Fick
DOCKET: <u>10-0101-1301</u>	IDAPA - 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 10.01.01 - Rules of Procedure	Keith Simila, Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors
DOCKET: <u>10-0102-1301</u>	10.01.02 - Rules of Professional Responsibility	Keith Simila
DOCKET: <u>10-0104-1301</u>	10.01.04 - Rules of Continuing Professional Development	Keith Simila

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 23, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. **Chairman Tippetts** welcomed former Senator Jim Hammond and announced the order of the agenda had changed because former Senator Hammond had to catch a flight.

RS 22546 **Relating to Health Reimbursement Arrangements** was presented by **Jim Hammond**, former State Senator and former State Board of Education member. He explained that the Health Reimbursement Arrangements-Voluntary Employees' Beneficiary Association (HRA-VEBA) provides the employer with an opportunity to reduce premium costs while providing the employee an opportunity to grow funds for non-reimbursed health care costs.

He said the funds are deposited into an employee-managed trust. The funds are tax free when deposited by the employer and withdrawn by the employee. This strategy, while reducing employer cost, provides the employee the opportunity to build a substantial fund for health care costs upon retirement.

He said the Department of Administration (DOA) may offer a health reimbursement arrangement as an approved benefit for all state employees or officers. (All state employees and their eligible dependents would participate in a health reimbursement arrangement if the employer chooses to offer the health reimbursement arrangement.) He explained that a "health reimbursement arrangement" meant an arrangement where employees may reimburse themselves for health care costs approved by the Internal Revenue Service (IRS) from a tax-exempt employee benefit trust known as a VEBA. He explained that a VEBA is managed by trustees elected by the employee members of the trust. He noted the DOA may promulgate rules to implement the provisions of the IRS regulations.

In addition, he added, the value of this legislation was that employees would become more involved in trying to save money towards the cost of their own health care. In other words, a HRA-VEBA is an account-based health reimbursement arrangement for an employee to reimburse qualified out-of-pocket health care expenses. It is not an insurance plan. The account is funded with employer contributions. The employee does not pay a premium for coverage. There are no co-pays or deductibles. The funds can be used from the HRA-VEBA account to reimburse qualified expenses. The maximum benefit (reimbursement) amount is equal to the available account balance at the time the claim is processed. **Mr. Hammond** and **Chairman Tippetts** had a discussion about the idea that not all units of government would offer this plan. The offer could be through one institution, such as Boise State University (BSU), and everyone from that institution would have to

participate. If offered statewide it would be overwhelming, **Mr. Hammond** said.

Should the State institute this program, there is potential for substantial long-term savings due to lower premiums and better health care management. Start up costs would be less than \$5,000. Ongoing costs could vary. Currently, the cost per participant per month ranges from \$1.50 to \$7.50.

MOTION: **Senator Goedde** moved to print **RS 22546**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 22474 **Relating to Medical Retainer Agreements - Direct Primary Care** was co-presented by **Senator Steven P. Thayne** and **Representative Lynn Luker**. **Senator Thayne** said this bill created a simple format for medical retainer agreements to provide routine health care services on a contract, non-insurance basis, which is exempt from regulation by the Department of Insurance (DOI). These services are otherwise known as "direct primary care" under the Patient Protection Affordable Care Act (PPACA) or as "concierge" medical services. Direct primary care is a process where physicians and other health care professionals provide routine services to patients in exchange for the patient's direct payment and without any insurance company reimbursement. This bill is patterned after a similar Utah provision.

Representative Luker told the Committee this was not an insurance product and did not need to be regulated by the DOI. He said it did give people another avenue to seek health care. This sets up a simple format that everyone can agree with. It provides for routine health services and it can be combined with a high deductible insurance policy if one chooses. Direct Primary Care allows doctors to focus more on prevention and to spend more time with their patients. **Senator Thayne** said this practice is emerging in New York, California and in the State of Washington. Initially the insurance industry fought this because they saw it as competition, but eventually came to see that it helps lower costs.

Senators Patrick, Goedde, Lakey, Schmidt and Guthrie had a discussion with **Representative Luker** about deductibles; catastrophic injuries; exemption from DOI oversight; direct primary care; what would be included in routine health care services; the written contract between a medical provider and an individual patient (in which the medical provider agrees to provide routine health care services to the individual patient for an agreed upon fee and period of time); billing of insurance companies; and medical licensing and the definition of a medical provider. **Representative Luker** said he would get more information about medical licensing and the definition of a medical provider, but commented that the guideline was intended to refer to physicians.

Senator Cameron asked Representative Luker, if one of the primary purposes of the DOI was to regulate insurance and to protect consumers. **Representative Luker** responded that he thought the ordinary process that would protect anyone outside of insurance transactions would protect consumers. He gave the example of the Idaho Medical Association and said there are licensing agencies who also protect consumers. **Senator Cameron** stated that if he were a physician and a consumer signed up for his service and then he skipped town and went to Mexico, would Representative Luker suggest the consumer contact their lawyer or the Idaho Medical Association. **Representative Luker** responded by saying he didn't see how that approach was any different from any other business relationship. **Senator Goedde** asked Representative Luker if this could be done now. **Senator Goedde** said his concern was that people may sign up for this program and then think that was all that they needed. This does not replace insurance **Representative Luker** stated.

MOTION: **Senator Martin** moved to print **RS 22474**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 22492 **Relating to the State Insurance Fund** was presented by **Senator Goedde**. He said that in 1998 the Idaho Legislature made major changes in statutes dealing with the State Insurance Fund (Fund). It came under the oversight of the DOI and was directed to operate as an insurance company. The operation became hindered by statutes which originally created the Fund in 1917 and created conflicting requirements. This bill repeals most of the code passed in 1917 dealing with the Fund and allows it to operate as intended in the 1998 amendments. There would be no fiscal impact.

MOTION: **Senator Guthrie** moved to print **RS 22492**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:** Chairman Tippets passed the gavel to Vice Chairman Patrick.

**DOCKET NO.
09-0130-1301** **Relating to Unemployment Insurance Benefits** was presented by **Bob Fick**, Department of Labor (Department), Communication and Legislative Affairs. He said the rule had two components which were the elimination of the tel-a-claim telephone reporting system for unemployment insurance benefit claimants and the determination that 12 weeks was a reasonable period of time for claimants on temporary layoff to be considered job-attached and exempt from conducting weekly job searches.

Mr. Fick said tel-a-claim was eliminated on July 21, 2013 because it could not be modified to handle the new reporting requirements for benefit claimants. Those requirements included identifying what business was contacted each week during the claimant's required job search. Weekly job search reports are required in order for a claimant to remain eligible for benefits. This change has intensified the Department's attempts to ensure that claimants actually conduct their weekly work searches and it has had an impact. He reported that from November 20, 2012 to January 3, 2013, the Department denied 100 weekly claims for failure to conduct a work search. In the same period in 2013 to 2014 the Department denied 2,600 weekly claims for failure to conduct a work search. Under tel-a-claim claimants only had to say "yes" they looked for work or "no" they did not. Now they have to identify who they contacted for work. The Department spot-checks about 100 of these claims each week. Exemptions from online filing have been granted to some claimants, primarily those who are disabled.

Mr. Fick said the designation of claimants as "job attached" has been, by policy, limited to 12 weeks in the past. This merely is stated policy in the rule. This is part of the Department's attempt to get people back to work faster, easing the pressure on the Unemployment Insurance Trust Fund, which keeps employer taxes in check. Of the surrounding states, Montana does not have a limit on "job attached" status, but is considering limiting it to half the claimant's benefit weeks. Utah has a limit of 10 weeks, Nevada 6, Washington 8, Oregon 4 and Wyoming 12.

Chairman Tippets asked if there were any complaints received by the Department about the elimination of the phone reporting. **Mr. Fick** replied that the Department has tried to make accommodations whenever they have had complaints.

Senator Lakey asked if accommodations would be made for those who could not get online due to the very specific timelines. **Mr. Fick** said they did make those kinds of accommodations.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0130-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0135-1301 **Relating to Unemployment Insurance Tax** was presented by **Bob Fick**, Department of Labor (Department), Communication and Legislative Affairs. He indicated this rule also had two components which required all employers to file their quarterly reports online and clarified the requirements for classifying a worker as an independent contractor rather than an employee.

Mr. Fick said the Department currently has a secure electronic system for employers to file reports and contact the Department on a range of issues. About 6,000 of the 47,000 employers currently file their quarterly reports on workers, wages paid and taxes owed online. This would require the rest of employers to do the same unless they obtained a waiver that the Department would consider on a case-by-case basis. This would reduce processing time and essentially eliminate errors and help the Department enforce the law on employer contributions.

He explained that the clarification of independent contractor determination requirements reduced the factors from 16 to 7 in response to directives from the United States Department of Labor, based on the United States Supreme Court's decisions on the issue. In addition to the criteria being considered, the rule provides examples to help guide employers in determining whether their relationship is with an independent contractor who is not covered by unemployment insurance or an employee who is covered. **Mr. Fick** said this goes hand-in-hand with the focus the federal and state departments have had for several years on reducing the misclassification of workers and independent contractors. It does not change in any way the Department's enforcement efforts, which have been focused on independent contractor misclassification for several years.

Senator Schmidt and **Vice Chairman Patrick** had a conversation with **Mr. Fick** and **Michael Johnson**, Bureau Tax Chief, Department of Labor (DOL), concerning the performance of independent contractors versus employees and how many people would be affected, if any; the simplification of the rule; bringing Idaho into conformance with other governing bodies; and actual contractual agreements whether oral or in writing.

Senator Guthrie stated that if there was going to be a savings or an impact on the budget, that should be reflected in the fiscal note. He wanted to know why the fiscal note indicated there was no fiscal impact or savings. **Senator Guthrie** and **Mr. Johnson** discussed the opportunity to save money; the reduction of errors, the saving of additional man hours; reduction of mailing costs due to everyone filing online; and the idea of not being able to accurately forecast the amount of money that would be saved.

Chairman Tippets agreed with Senator Guthrie's concern about "no fiscal impact" and said he wanted to get an estimate from the DOL regarding possible savings. **Chairman Tippets** said he knew the fiscal impact was hard to determine, but he preferred, whenever possible, to have an estimate of that information. He said it would help the Committee to determine whether or not the agency would have enough savings that could impact, for example, employees or employers. If we have suggested savings he said, then the agency could indicate what was going to be done if there was a significant reduction in work.

Mr. Fick said he would get an estimate and get the information to the Committee within the next day or two.

Senator Martin asked about page 89(d)(1), relating to reimbursement for work-related supplies. He said there had always been pressure over the years to eliminate independent contractors, but he thought the language was of concern to him. **Mr. Fick** replied that he understood and that these were guidelines that were provided to help employers determine whether or not the person that was working for them was a contractor. This is a way to help employers determine whether there is a worker investment or if there is an employer investment.

MOTION:

Senator Schmidt moved to adopt **Docket No. 09-0135-1301**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**. **Senator Martin** voted **nay**.

Senator Schmidt commented that the actual fiscal note was accurate by showing there was no effect on the General Fund. **Chairman Tippetts** said he wanted to applaud the DOL for providing guidance for employers to determine whether or not someone was an independent contractor, which had always been a gray area.

**DOCKET NO.
10-0101-1301**

Relating to the Idaho Board of Licensure of Professional Land Surveyors, Rules of Procedure was presented by **Keith Simila**, Executive Director. He indicated he was new to the position and replaced David Curtis, who was in the position for 26 years.

He said the rule began on page 92 of the Pending Rule Book. He said this rule had been adopted by the Board of Licensure of Professional Land Surveyors (Board) and that it has the support of professional engineering and surveying societies and associations in Idaho.

He explained that the need for the rule came about because the National Council of Examiners for Engineering and Surveying (NCEES) has adopted national education standards for surveyors to be eligible as surveyor interns. This rule modifies the college courses required to be eligible for the Fundamentals of Surveying Examination. In general, the education required better aligns with the surveying curriculum at Idaho State University (ISU). The ISU Geomatics program is Board-approved and is the standard to which other survey degree programs are compared.

Chairman Tippetts voiced a concern about the changes. He referred to the bottom of page 96 in the rule book. He was concerned about the requirement of 16 college semester credits in general education. He expressed concern about an applicant who has a four year Bachelor's degree that is in a related science and who has more credits than they need that are directly related to the profession of surveying, but who does not have enough credits in the area of philosophy, religion or history. He stated that if someone was surveying property, the owner would not care if the surveyor had credit in philosophy, but would be more concerned about whether that person could do the job. **Mr. Simila** said the Board has a philosophical belief that land surveying is a profession. Potential land surveying candidates have to qualify to take the exam. **Chairman Tippetts** said he would not like to see someone denied approval to take the exam because he or she didn't have the additional credits in the humanities. **Mr. Simila** indicated the rule mostly applied to those who don't graduate from college in the United States. Most degrees in the United States require general education classes, but those classes are not required in foreign countries.

Senator Ward-Engelking asked if there was an exception in place where someone could be eligible to take the exams, but with the condition that they would have

to take the general education classes. **Mr. Simila** said the individual would have to meet certain requirements and that one would be the general education requirement. The Board would not assign an individual to take the test until he or she met the educational requirements. The Board has the opportunity, if someone comes from out-of-state, to waive some of the requirements. The Board applies the rules that were in place at the time the applicant received his or her license from out-of-state.

Senator Goedde asked about the total required credits and what was the minimum to qualify to take the test. **Mr. Simila** said a Bachelor of Science degree was required. He said 30 credits were required for the survey courses and a new set number of humanities courses. **Senator Goedde** commented that the perception was that surveyors were trying to make the qualifications more stringent, increase their income and make their jobs scarce.

Mr. Simila said applicants must have a technical understanding of the subject and the exams were very specific. **Senator Martin, Chairman Tippets, Vice Chairman Patrick** and **Mr. Simila** had a conversation about the pool of applicants, retirements, raising the level of interest in order to broaden the pool of applicants, curriculum requirements, and the idea that the rule is more restrictive, not less restrictive.

MOTION: **Senator Guthrie** moved to reject **Docket No.10-0101-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 10-0102-1301 **Rules of Professional Responsibility** was presented by **Keith Simila**, Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (Board). He referred to page 103 and said this rule had been adopted by the Board and has the support of professional engineering and surveying societies and associations in Idaho.

He indicated that the need for the rule came about because of a lack of clarity regarding conflict of interest. There is a need to better define the types of engineering and land surveying positions in a business entity that are subject to these provisions. The previous rule used the term "principle" of a company. Rather than define "principle", the Board chose to list the types of positions in a company subject to the rule.

In addition, **Mr. Simila** said that the current rules prohibit a licensee from participating in decisions with respect to professional services by their firms. Rather than identify all such possible occurrences, the Board proposed a rule which requires all licensees to adhere to the Ethics in Government Act, Idaho Code § 59-701. A violation of that law is considered a violation of the Rules of Professional Responsibility.

MOTION: **Senator Goedde** moved to adopt **Docket No. 10-0102-1301**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
10-0104-1301**

Rules of Continuing Professional Development, was presented by **Keith Simila**, Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (Board). He said the rule began on page 107 of the Pending Rule Book. He said this rule has been adopted by the Board and has the support of professional engineering and surveying societies and associations in Idaho.

He explained the rule was needed because the original rule for continuing professional development adopted in 2009 inadvertently placed the attendance record requirements in the wrong section. This rule amendment removes the record keeping requirement from 008.01 Log and places it in 008.02 Attendance Verification, where it belongs.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 10-0104-1301**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

PASSED
GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:50 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 28, 2014

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Margaret Henbest of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Margaret Henbest
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Dr. John Livingston of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Dr. John Livingston
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Jeff Agenbroad of Nampa, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Jeff Agenbroad
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Tom Shores of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Tom Shores
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Fernando Veloz of Meridian, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Fernando Veloz
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Steven Weeg of Pocatello, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Steven Weeg
Docket No. <u>15-0401-1302</u>	Pending Rule Rules of the Division of Human Resources and Personnel Commission	David Fulkerson, Interim Administrator, Division of Human Resources

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippets

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 28, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m.

MOTION: **Senator Lakey** moved to approve the Minutes of January 14, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Margaret Henbest of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Margaret Henbest thanked the Committee for their time. She thanked the Governor and said she was honored to be appointed to the Idaho Health Insurance Exchange Board (Board). She said she is the Executive Director of two related nursing professional organizations, the Nurse Leaders of Idaho, and its foundation, Idaho Alliance of Leaders in Nursing. For over two decades she has been involved both professionally and as an elected official in advocating for the health care needs of Idahoans. She was first elected to the Idaho House of Representatives in 1996 and served for 12 years where she worked to address the needs of the uninsured and to improve the safety, quality and affordability of the care citizens receive. She was a member of the Joint Finance-Appropriations Committee (JFAC) and served on the Health Care Task Force for a number of years. Her experiences have helped her define her role on the Board. **Ms. Henbest** said she is committed to nursing, her community, and the State of Idaho.

Vice Chairman Patrick commented that he also served with Ms. Henbest in the House and she had good ideas related to the medical field. **Chairman Tippetts** asked Ms. Henbest, as President of the Mountain States Group, how she would handle potential conflicts if they arose. **Ms. Henbest** said she would declare a conflict of interest and would abstain from any voting.

MOTION:

Senator Martin moved to send the gubernatorial appointment of Margaret Henbest to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the appointment on the floor of the Senate.

Senator Cameron commented that Ms. Henbest has been a friend of his for a long time, that she works very hard, does her homework and has saved the State millions of dollars because of her work with Representative Wood. He continued that she has been instrumental in helping Idahoans and is an outstanding appointment by the Governor.

Senator Goedde agreed with Senator Cameron and said he has served with Ms. Henbest and appreciated her point-of-view.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Dr. John Livingston of Boise, Idaho, to the Idaho Health Insurance Exchange Board to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Dr. Livingston thanked the Committee for their time and consideration. At St. Alphonsus Hospital, **Dr. Livingston** stated he started the trauma service program. Currently he is in private practice in Boise. He belongs to many professional organizations and committees. He said he has been a practicing general trauma surgeon for 38 years. When he was head of trauma at St. Alphonsus Hospital, he was able to participate in the backside issues regarding insurance companies, contracting carriers and providers, from both the perspective of the physician and the hospital.

After teaching a trauma course called "Combined Combat Casualty Care", two of his students from his class who were doctors in Texas, became involved in forming (along with the broker community) a private health insurance exchange. He was never a party to or a principle in any of those exchanges, nor was he an investor. He was privy to many of the start-up discussions and came to understand the efficacy and efficiency of an insurance exchange.

Dr. Livingston said he serves on the Operations Committee for Your Health Idaho (YHI) and felt it would be appropriate to make a few comments about his participation. On May 9, documents that were prescribed in the legislation regarding operations, bylaws, procurement documents, and conflict of interest were written. Those documents were never intended to be permanent documents. In October the Board had an incident with a "no bid contract" and they asked for outside counsel to make some recommendations regarding how to proceed. The Board took steps to fix the problem with the advice of the outside counsel. The Board proceeded to form an organization based on a charter system. Each committee has its own charter and will decide on the issues germane to each committee. The draft of the bylaws will be completed by February 7 and is available to anyone. The Board has taken great pains to be transparent and open to the public. **Dr. Livingston** said he takes partial responsibility for not having the proper documents in place when the problem occurred, but the Board took the proper steps to move forward and to continue running the Idaho Health Insurance Exchange (Exchange).

Dr. Livingston said he envisions the Exchange could continue to run as an independent body, as it is currently. He said the Exchange could also become a division of the Department of Insurance or the Exchange could morph someday into a private exchange.

Senator Lakey asked Dr. Livingston to describe what he identified as the contractual problem, what he learned and how he fixed the problem. **Dr. Livingston** said the problem was identified immediately. He commented that the actual procurement document had been completely written out from the operations document that was in place. There was not a threshold sum of money that was identified and there was a blank line that was not filled in.

Senator Schmidt commented that when he looked at the statutes in which the Board designated categories that appointees are to satisfy, he assumed Dr. Livingston was one of the two members on the Board representing health care providers. He said the Committee needed to make sure that area was covered. **Dr. Livingston** responded he has been a trauma surgeon since 1988 and believed he was appointed to fill that position.

Senator Martin commented that he was concerned about the activities of the Board. He appreciated the opportunity to communicate with those involved and he said the system worked. **Dr. Livingston** thanked Senator Martin for his comments and said that this was an example of how an Idaho board functions to take care of Idaho people.

MOTION:

Senator Guthrie moved to send the gubernatorial appointment of Dr. John Livingston to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Jeff Agenbroad of Nampa, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Jeff Agenbroad thanked the Committee for their time and consideration. He said he was an experienced, enthusiastic and dedicated executive with over 25 years of experience leading successful teams. Currently, he is Vice President of Zions Bank, where he is responsible for large credit commercial and agricultural credit underwriting, credit management, deposit acquisition, marketing and business development. In addition, he is President, Chief Executive Officer, co-founder and owner of a small business holding company. He is active in many business and community activities, including being a board member for St. Alphonsus Regional Medical Center and the Idaho Stampede.

Senator Lakey thanked Mr. Agenbroad for his service. He asked Mr. Agenbroad to describe the advantages of having an Idaho-based board instead of a federal board. **Mr. Agenbroad** responded the Legislature took a law and brought it under the control of Idahoans. He further commented that the technology was Idaho-driven. **Senator Lakey** expressed a concern about the security of the data. **Mr. Agenbroad** answered that the security of data was always a concern for the Board. He stated to date, the data was as secure as the Medicare system.

Senator Schmidt asked Mr. Agenbroad how many people he employed. **Mr. Agenbroad** said he had between 11 and 25 employees.

MOTION:

Senator Schmidt moved to send the gubernatorial appointment of Jeff Agenbroad to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Tom Shores of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Tom Shores said he started in the insurance industry in October 1994 and he works with small businesses, individuals and Medicare. He has been involved in the National Association of Health Underwriters for the State of Idaho and with organizations at local levels. He currently is completing a term as State President for Health Underwriters. In addition, he has served as the local president of the National Association of Insurance and Financial Advisors (NAIFA), Boise for 2011 and 2012. He is currently serving as the Legislative Chair for this board. He has been very active in making sure that every agent is prepared to provide the people of Idaho the very best information about how the Exchange works. He stated that when Idahoans work with Idahoans to solve problems, they always do well.

Senator Martin stated that he heard from Director Weeg last week that presently the Exchange is not using Navigators. In the future, however, the federal government will require states to use Navigators. **Mr. Shores** responded by saying the Exchange is using In Person Assistants (IPA), who go through over 80 hours of training and background checks. **Mr. Shores** said he thought that IPA could fill the requirement of the federal government.

Senator Lakey asked Mr. Shores if he had seen the benefit of an Idaho exchange rather than a federally-run exchange to the agent/broker community. **Mr. Shores** replied that he did see the benefit. He stated the enrollment process used to enroll people does not work as well as the Board would like. There were some glitches the Board had to work around to get people enrolled. For example, there were people who didn't have ordinary insurance in the past or there were individuals who currently have policies that were cancelled due to the Affordable Care Act. The Board had to find a way to actually better meet their needs.

MOTION:

Senator Goedde moved to send the gubernatorial appointment of Tom Shores to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Fernando Veloz of Meridian, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Fernando Veloz thanked the Committee for their time and consideration. He said he has more than 15 years of experience as a financial professional with health care and managerial experience. His experience includes health care, employer consulting, profit and loss methodology, financial reports, Personal Computer (PC) based databases and platforms, planning and reporting, performance measurements, coordinating development of business marketing goals, accounting controls, budgeting and generally accepted accounting principles. Currently he is the Chief Financial Officer/Controller for a company called M S Administrative Services, Inc. in Boise. He is a Certified Public Accountant. He is also the Chairman of the Employer Health Coalition of Idaho (Coalition). The Coalition provides for education and the dissemination of information about health care for employers in the valley. This group is made up of employers from small companies, mid-sized groups and large companies.

He said the key points for YHI is that the plan design is a state-based solution unique to the State of Idaho.

He stressed key points of local control, accountability, plan design, job creation, IPA, call centers, education of agents and brokers, and low cost of administering plans. He is affiliated with several professional groups. He said he wants to make sure the program is administered with the highest integrity and that the program and data are reliable and a quality product.

MOTION:

Senator Schmidt moved to send the gubernatorial appointment of Fernando Veloz to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Chairman Tippetts will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Stephen Weeg of Pocatello, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Stephen Weeg thanked the Committee for their time and consideration. He said currently he is retired, but has a consulting practice. Prior to that he was the Executive Director of Health West, which is a Migrant and Community Health Center with primary and preventive care clinics in six medically underserved areas of southeast Idaho. He has been a member of several associations and has done many presentations. He said that there is 100 percent commitment by this Board. He further stated that what we do can make a difference.

Senator Cameron said that Mr. Weeg covered his role as Chairman of the Board when he was before the Committee last week during his presentation of the YHI Annual Report. He asked Mr. Weeg to explain his role in the process of issuing the "no bid" contract. **Mr. Weeg** said he was involved in the misstep but he was also part of the corrective action. The solution was due in part to the expertise that was made available to the Board. He said the Board identified the problem quickly and discussed how to solve the problem decisively and thoughtfully, without jumping to conclusions. **Senator Cameron** said the full weight of any decision weighs on Mr. Weeg as the Chairman of the Board, and he wanted to know what role Mr. Weeg played in the misstep and what he learned so this wouldn't happen. **Mr. Weeg** responded that he took full responsibility for the misstep, and he sent an e-mail to Chairman Tippetts indicating he took full ownership. He said he took a quality improvement approach, listed what they did and why, and put a number of steps in place to insure this wouldn't happen again. They severely strengthened the procurement policy. They put a limit of \$15,000 on the amount of contractual liability restricting how much money can be spent without Board approval. They created another policy and procedure specifying who can do what for various amounts of money. The Board put into place a one-year cooling off period so that no Board member can accept work from the Exchange within 12 months of being on the Board. They asked their personnel committee to look at how to review and evaluate the staff. They are also in the process of looking at how to re-evaluate themselves as a Board.

Senator Cameron commented that he wanted the Board and Committee to know the benefits of having a state-based exchange and to have access to the Board Chairman. He appreciated the responsiveness after a mistake was made. He said we all wish the mistake had not been made, but everyone has learned from the mistake. **Mr. Weeg** responded that he too wished the mistake had not been made.

Senator Schmidt asked Mr. Weeg if the changes made to the procurement policy are similar to statewide policies or if they are unique. **Mr. Weeg** indicated that when the law was passed, the Legislature told the Board they did not have to follow the state procurement policy, to make their own policy and to make their meetings accessible. He said the Board has looked at state models for procurement, but given they had five months to get something done, and that some of the processes take longer, the Legislature gave them some leeway. They have tried to align themselves with the state procurement policy, but have individualized their policy to fit the needs of the organization. He said they were in the final stages of their procurement policy for discretionary funds. This has been a multi-month process to review the Request for Proposal (RFP) and to review the best and final offers with their new vendor. **Senator Schmidt** asked if the one-year cooling off period was consistent with the policy of the State. **Mr. Weeg** stated he was not sure what the state policy was for a cooling off period.

Senator Lakey asked Mr. Weeg if the Exchange was going to be open by fall. **Mr. Weeg** indicated the Board was working with due diligence, and they were close to having their own platform. He said the biggest issue was to get a good vendor and to have the right oversight. They have a number of systems in place, so they don't make another mistake.

MOTION:

Senator Martin moved to send the gubernatorial appointment of Stephen Weeg to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the appointment on the floor of the Senate.

PASSED GAVEL:

Chairman Tippetts passed the gavel to Vice Chairman Patrick.

**DOCKET NO.
15-0401-1302**

Rules of the Division of Human Resources and Personnel Commission was presented by **David Fulkerson**, Interim Administrator, Division of Human Resources (DHR). He outlined the information contained in the rule. He said the DHR was adding definitions and clarifying rules so consistency would be achieved across agencies. Two different definitions were added, "Administrative Leave" and "Salary Equity Increase", as the terms were already addressed in Executive Policy or 2006 Agency Guidance Memorandum, but the purpose was not consistently understood and applied. Two definitions regarding veterans, "disabled veteran" and "veteran", were added to match the statute change to Idaho Code § 67-502(17), approved during the 2013 Legislative Session. Also, he added, the definitions of "Merit Increase" and "Underfill" were revised. Other DHR rules were updated to clarify verbiage. There is no fiscal impact.

Chairman Tippetts asked about the provision at the bottom of page 133. When an employee seeks a transfer, reemployment or promotion between agencies, the former agency must copy all performance evaluation documents. He pointed out there was no time limit on the requirement. He gave an example of someone who had been with an agency for 20 to 25 years, and asked if we really wanted to require an agency to copy all of those performance evaluations and send them to the new agency. **Mr. Fulkerson** said as written, that would be the rule. He said that some discretion would be advised for long-term employees. DHR would want to make sure that an agency had the ability to have all documents on the past performance of an employee, which would provide better evaluations going forward. **Chairman Tippetts** recommended that if that was not the intention, a time limit should be assigned for long-term employees. **Vice Chairman Patrick** agreed.

Senator Lakey asked Mr. Fulkerson to work on the redundant language in the rule relating to the definitions of service-rated disability, disabled veterans or Purple Heart recipients.

Senator Guthrie had a conversation with **Mr. Fulkerson** about language defining administrative temporary paid leave. **Senator Guthrie** asked why there was no time limit and why this language was in the rule. **Mr. Fulkerson** explained the reason there was no time limit for administrative leave was because the person was assumed innocent until proven guilty. **Senator Guthrie** asked if there were provisions to excuse the State from paying the wages while an employee was off if there was some sort of criminal intent on the part of the employee. **Mr. Fulkerson** said he was not completely sure but an investigation had to be done first.

MOTION:

Senator Schmidt moved to adopt **Docket No. 15-0401-1302**. Chairman Tippets seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL:

Vice Chairman Patrick passed the gavel to **Chairman Tippets**.

ADJOURNED:

There being no further business, **Chairman Tippets** adjourned the meeting at 2:37 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 30, 2014

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Hyatt Erstad of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Hyatt Erstad
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Karen Vauk of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Karen Vauk
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of David Self of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	David Self
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Scott Kreiling of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Scott Kreiling
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Kevin Settles of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Kevin Settles
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Mark Estess of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Mark Estess
RS22596	Relating to Insurance	Woody Richards, Idaho Insurance Guaranty Association

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 30, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Goedde

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m., welcomed everyone and went over the agenda.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Hyatt Erstad of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Hyatt Erstad thanked the Committee and said it was a privilege to be considered for the Idaho Health Insurance Exchange Board (Board). He said he has had experience being either the chairman of the board or a board member for various organizations. He holds a Bachelor's Degree in General Business, is a registered representative with the National Association of Securities Dealers (NASD) and the Securities Exchange Commission (SEC), is a graduate of Massachusetts Mutual Career Development and Business and Estate Planning, and a graduate of the Life Underwriting Training Council. Currently, he is the Chairman of the Board of the Idaho High Risk Pool and the Idaho Small Employer Board of Directors. He said his role on the Board is that of producer. He mentioned his business works with small employers and helps them navigate legislation and rules. He currently chairs the high risk pool. He has seen that pool grow over the years. This pool has been a very challenging, solvent program which has given him a good background as we move forward with the Exchange.

Senator Patrick asked what was going to happen with the high risk pool with the institution of the Exchange. **Mr. Erstad** said that when the Affordable Care Act (ACA) was passed, the federal "pre-existing condition" high risk pool was included and was in conjunction with the state high risk pools. The Legislature elected not to implement the "pre-existing condition" high risk pools. Those were technically intended to be eliminated January 1. He noted that many states were winding their state pools down. Due to natural attrition, high risk individuals will migrate out to the Idaho Exchange. High risk pool plans are not quite as rich as the plans found in the markets for the Exchange now. The "pre-existing condition" high risk pools, which in Idaho were federally run, have been extended to March 31.

MOTION: **Senator Guthrie** moved to send the gubernatorial appointment of Hyatt Erstad to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Karen Vauk of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Karen Vauk thanked the Committee for their time and stated it was an honor to represent Boise. She said that currently she is the President and Chief Executive Officer for the Idaho Food Bank. She explained that she is familiar with the financial challenges facing Idaho's low-income population and that medical expenses often create a significant burden. She said the learning curve was steep, and she was learning more every day.

She said she is a member of the Outreach and Education Committee. She explained that as she read through the Your Health Idaho (YHI) annual report, she was proud of the tasks they took on.

Senator Lakey asked Ms. Vauk to describe, from her perspective as a consumer, what the positives and the negatives of a state-based exchange were versus a federally-based exchange. **Ms. Vauk** responded that at the state level the Board can review and confirm state plans, manage the fee structure and be cost effective. She believes the local on-the-ground communication and the Consumer Connector's Program are significantly better than what we could do from a federal exchange standpoint. Consumers can interact with neighbors regarding health insurance issues. Having a state-based exchange makes it all about Idaho.

MOTION:

Senator Ward-Engelking moved to send the gubernatorial appointment of Karen Vauk to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of David Self of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

David Self explained he was currently Senior Vice President and Regional Director for Idaho and Washington, for Pacific Source Health Plans. He said he oversees Idaho operations, lead sales with marketing and business development activities in commercial and government markets. In addition, he is the executive representative with regulatory entities, business partners, industry organizations, the business community and the media. He has spent 24 years as a health insurance and technology executive. Currently, he is on the Outreach Education Committee and the Outreach and Governance Committee. He and his colleagues have the unique opportunity to craft insurance for Idahoans without layers. He said he was grateful to have the opportunity to serve the people of Idaho.

Senator Cameron disclosed for the record (for this presenter and the next two presenters) that his office works with Pacific Source and Regence BlueShield.

MOTION:

Senator Lakey moved to send the gubernatorial appointment of David Self to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lodge will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Scott Kreiling of Boise, Idaho, to the Idaho Health Insurance Exchange Board to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Scott Kreiling thanked the Committee for their time and said that he was proud to serve the State of Idaho. He said that currently he is President of Regence BlueShield of Idaho. He said his current responsibilities included leading and executing Regence BlueShield of Idaho strategies. He said he was responsible for directing and guiding statewide operations and market performance while representing and promoting Regence in business and civic arenas throughout the State. **Mr. Kreiling** said he was focused on what the Board can do for the consumer.

Senator Cameron disclosed for the record, that he had a potential conflict of interest. He said, for the record, that Mr. Kreiling was a class act and that we are fortunate to have this caliber of person on our Board. He asked Mr. Kreiling what direction he thought the Exchange was moving once Idaho took over its share of the Exchange. **Mr. Kreiling** said he was excited about getting off of the federal technology and happy to be working with the state's technology. He said we can continue to keep costs down, keep staffing to a minimum and provide a solution that is local and for Idaho.

Senator Cameron asked, from the perspective of a carrier, what are the advantages of a state-based exchange rather than a federal exchange. **Mr. Kreiling** responded that we are a local company and we are here in the marketplace. **Mr. Kreiling** said the Department of Insurance and the Legislature understands the challenges. The Exchange has the ability to adapt to accomplish things that make sense and preserve our values. In the near future, the Exchange has to be self-sustaining. The Board is ensuring that we have qualified people who have undergone an FBI check. We have brokers who truly understand Idaho and the consumer and can answer questions about health insurance.

Senator Guthrie wanted to know if other carriers had questioned Mr. Kreiling about the state exchange and whether he had any conversations with carriers in other states. **Mr. Kreiling** replied that he has spoken with others across the country who wished they had implemented a state-based exchange. By having a state-based exchange, broker relationships have been strengthened. Some states are in a position where they have no local control.

Senator Schmidt asked whether the Board has had a discussion about a succession plan for their four-year terms. **Mr. Kreiling** said the legislation did not address replacements, and the authority was up to the Governor, subject to Senate confirmation. He said the Board will take that issue under advisement.

MOTION:

Senator Guthrie moved to send the gubernatorial appointment of Scott Kreiling to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Kevin Settles of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Kevin Settles thanked the Committee for their time and said it was a great privilege to be on the Board. He said he owns and operates the successful Bardenay Restaurant and distillery operations, with locations in Boise, Eagle and Coeur d'Alene. He explained he is a member of the National Restaurant Association Board of Directors, past president of the Idaho Lodging and Restaurant Associations Board of Directors, secretary of the Bogus Basin Recreational Association Board of Directors, and a Commissioner for the Idaho Human Rights Commission. **Mr. Settles** said he represents small businesses. Initially, he had great concerns about a state exchange. He said it was critical for a business to find out what was going on with the Exchange. He said he has learned a tremendous amount. His primary goal is to insure that YHI is efficient and cost effective.

MOTION:

Vice Chairman Patrick moved to send the gubernatorial appointment of Kevin Settles to the Idaho Health Insurance Exchange Board, to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Patrick will carry the appointment on the floor of the Senate.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Mark Estess of Boise, Idaho, to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Mark Estess thanked the Committee for their time. He said he is the State Director of the American Association of Retired Persons (AARP), Idaho, and has had over two decades of leadership, strategic executive management, government relations and consumer affairs experience from the association, corporate, non-profit and public policymaking arenas. He is a team-oriented manager, effective at utilizing a consensus solution-oriented approach, building coalitions, and fostering understanding, compromise and broad agreement among stakeholders with diverse and often divergent interests. He said he has worked on health insurance policy and state and federal regulatory issues for some of the largest health care providers and public pension funds in the country with regional and national operations. He noted that he is an effective advocate at the community, state and national levels, having worked in and with the legislative, executive and judicial branches of government, on both sides of the federal-state relationship in Idaho and Washington, D.C.

His role on the Board is to fill the consumers role. He serves as Chair of the Product Committee or the Marketplace Committee, formerly known as the Technology Committee. He said he has made efforts to build awareness and to market the Exchange to Idahoans. His Committee has focused on setting up the Information Technology (IT) systems and processes associated with building the Exchange from the IT standpoint.

He said he wanted to share his perspective. He said the difference between a state-based exchange and a federal exchange is that it is about the people. He said the state-based Exchange really cares about the welfare of Idahoans. The Board has afforded the opportunity to create from the outset a very inclusive, transparent process that is really balanced. People have the opportunity to come in and provide their opinions and perspectives, which really influences the outcome of the decisions that the Board makes. Agents and brokers have the opportunity to get a look and a feel of what the Exchange looks like. They can decide if it is cumbersome or too complicated, and whether it make sense. They are going to be able to give real and meaningful input, as practitioners who live and work in Idaho, into the overall architecture of the Exchange. We now find ourselves with a competitive advantage. The question is how do we build a state-based exchange that is viable. **Senator Guthrie** commented that

he appreciated the outreach and the answers to questions that Mr. Estess provided.

MOTION:

Senator Lakey moved to send the gubernatorial appointment of Mark Estess to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the appointment on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:06 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 04, 2014

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve - January 21, 2014	Senator Schmidt
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Zelda Geyer-Sylvia of Boise, Idaho to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.	Zelda Geyer-Sylvia
<u>RS22577:</u>	Relating to Legal Rate of Interest	Senator John Goedde
DOCKET NO.	Pending Rules	
<u>14-0101-1301</u>	Rules of Procedure of the Board of Registration for Professional Geologists	Roger Hales, Bureau of Occupational Licenses
<u>24-0201-1301</u>	Rules of the Board of Barber Examiners	Roger Hales
<u>24-0801-1301</u>	Rules of the State Board of Morticians	Roger Hales
<u>24-1801-1301</u>	Rules of the Real Estate Appraiser Board	Roger Hales
<u>24-2501-1301</u>	Rules of the Idaho Driving Business Licensure Board	Roger Hales
DOCKET NO.	Fee Rules	
<u>24-0401-1301</u>	Fee Rule of the Idaho Board of Cosmetology	Roger Hales
<u>24-0701-1301</u>	Fee Rule of the Idaho State Board of Landscape Architects	Roger Hales
<u>S 1204:</u>	Relating to Rights and Privileges of Veterans and the State Employee Personnel System	David Fulkerson, Interim Director, Division of Human Resources
<u>S 1205:</u>	Relating to Idaho Real Estate License Law	Jeanne Jackson-Heim

COMMITTEE MEMBERS

Chairman Tippetts
Vice Chairman Patrick
Sen Cameron
Sen Goedde
Sen Guthrie

Sen Martin
Sen Lakey
Sen Schmidt
Sen Ward-Engelking

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 04, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippetts

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

APPROVAL OF MINUTES: **Senator Schmidt** moved to approve the Minutes of January 21, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

APPROVAL OF MINUTES: **Senator Ward-Engelking** moved to approve the Minutes of January 23, 2014. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Zelda Geyer-Sylvia of Boise, Idaho to the Idaho Health Insurance Exchange Board, to serve a term commencing April 10, 2013 and expiring April 10, 2017.

Zelda Geyer-Sylvia thanked the Committee and said it was a privilege to be considered for the Idaho Health Insurance Exchange Board (Board). She said that currently she is the President and Chief Executive Officer and Executive Vice President and Chief Operating Officer for Blue Cross of Idaho in Boise. She said she has full responsibility for leading the day-to-day operations of Blue Cross, a 700,000 member insurance company with revenues of over \$1 billion. She said she had over 30 years of health insurance and provider management experience.

Senator Cameron asked Ms. Geyer-Sylvia if there were other states that have company presidents on the Insurance Exchange Board. **Ms. Geyer-Sylvia** said she had not heard of any other company presidents being on boards in other states and she said that she felt it was a privilege and a unique situation. **Senator Cameron** asked Ms. Geyer-Sylvia what she saw as the largest challenges for the Exchange going forward. **Ms. Geyer-Sylvia** said she thought the largest challenge was to continue to have the collaborative spirit the Board has established. She continued that what has impressed her the most is that the Board works well together to solve problems for the State. **Senator Cameron** commented he had the privilege of being associated with Ms. Geyer-Sylvia, that she was dynamic and he wanted to say publicly that we are lucky to have someone of her caliber. He thanked her for her willingness to serve. **Vice Chairman Patrick** said he agreed.

MOTION: **Senator Martin** moved to send the gubernatorial appointment of Zelda Geyer-Sylvia to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the confirmation on the floor of the Senate.

RS 22577

Relating to Legal Rate of Interest, was presented by Senator Goedde. **Senator Goedde** explained this legislation amends Idaho Code § 28-22-104, to establish provisions relating to the calculation of prejudgment interest. He said that in 1981, the Legislature set prejudgment interest at 12 percent. This rate is no longer reasonable and the legislation would use the same formula currently in Idaho Code for post judgment interest as the rating mechanism for prejudgment interest. There was no fiscal impact, but the cost of unfavorable court decisions would be reduced during current economic conditions.

MOTION:

Senator Cameron moved to print **RS 22577**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
14-0101-1301**

Relating to Rules of Procedure of the Board of Registration for Professional Geologists, beginning on page 111, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it is being adopted as originally proposed. He stated this rule clarifies when a geologist can use a seal. The bill provides guidance and clarity and was consistent with other professions, such as architects. He indicated the seal and signature can only be used when the work being stamped was under the registrant's responsible charge. Additionally, in the event a registrant in responsible charge of a project leaves employment, is transferred, promoted, becomes incapacitated, dies, or is otherwise not available to seal, sign and date final documents, the duty of responsible charge for the project will be accomplished by a successor registrant who will become familiar with and review, in detail, and retain the project documents to date. **Mr. Hales** said the rule is consistent with the national approach for engineers and architects. There was no opposition to this rule. There is no fiscal impact.

Vice Chairman Patrick asked if the rule had been negotiated. **Mr. Hales** replied that there was an "open" notice given and everyone involved had the opportunity to provide input and to express any concerns. There was no opposition.

MOTION:

Senator Schmidt moved to adopt **Docket No. 14-0101-1301**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0201-1301**

Rules of the Board of Barber Examiners, beginning on page 205 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said this proposal reduces regulation and eliminates continuing education for instructors. The Board does not believe the education is necessary for public health and safety. The profession does not change significantly and there is limited availability of continuing education classes. There was no opposition to this rule.

Senator Schmidt asked if any of the self-regulated agencies graduate out of this status by saying they do not want to be licensed. **Mr. Hales** replied the issue was that instructor licenses were being held due to the continuing education requirement. Barber instructors can still practice their trade with this license. There is no fiscal impact. **Senator Lakey** said he was not aware of the continuing education requirements. **Mr. Hales** replied that the rule was not detailed and crystal clear and that is why the Board wanted to eliminate this requirement.

MOTION:

Senator Lakey moved to adopt **Docket No. 24-0201-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

Rules of the State Board of Morticians, beginning on page 208 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said the proposed rules added a new cremation process and updated the rules to be consistent with law. He said in the case of alkaline hydrolysis, a pressurized vessel heated to 150 degrees Celsius (330 degrees Fahrenheit) for a minimum recommended period of 30 minutes, meets or exceeds the United States Center for Disease Control (CDC) requirements for the complete destruction of human pathogens. All pertinent federal, state, and local permits have to be obtained when operating an alkaline hydrolysis retort (crematory chamber).

The funeral director or licensed mortician who supervised or was otherwise directly responsible for the burial, cremation, or other disposition, must sign documents. The term "funeral director" was added to make the rule consistent with the law. This rule clarified disciplinary rules as they relate to licensees and morticians. There was no opposition to this rule. There is no fiscal impact.

Senator Cameron asked if Mr. Hales was aware of any state permits that were required for the alkaline hydrolysis retort process described on page 211. **Mr. Hales** replied that he was not aware of any special permit requirements, but he understood that some resulting liquid could be discharged through the drainage system. He said the Board wanted to make sure that anyone who has to do this has the proper permits. **Senator Cameron** wanted to know if Mr. Hales was anticipating additional permits. **Mr. Hales** responded that some crematory chambers are in operation, and he doesn't know what type of permits would be required. The Board wanted to make sure that anyone that wanted to use the alkaline hydrolysis process must explore the requirements and obtain relevant required permits.

Senator Cameron said he has issues when the negotiated rulemaking process is not used, and he wanted to know why the Bureau did not use that process. Sometimes, he commented, legislators hear complaints when an agency has submitted rules and gone through the notice process. Constituents report they were unaware of any changes. **Tana Cory**, Chief of the Bureau of Occupational Licences, testified that legislation provides for another process. She said the Bureau used informal negotiated rulemaking and that they work differently than other agencies. All of their Board meetings are open meetings and notices are posted on their website. She indicated that if they were to receive comments, they would go through formal negotiated rulemaking. **Senator Cameron** said he had seen other agencies have their rules rejected because they did not go through negotiated rulemaking. He encouraged the Bureau to continue to be diligent and said he would like to see them participate in the negotiated rulemaking process.

Vice Chairman Patrick agreed.

Ms. Cory commented that they communicate with the boards they serve. She added that a postcard is mailed out to all licensees when the rules are posted.

MOTION:

Senator Goedde moved to adopt **Docket No. 24-0801-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

Rules of the Real Estate Appraiser Board, beginning on page 214 was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. He said the Board was amending its rules to comply with recent Appraiser Qualification Board (AQB) changes mandated in federal law and regulation regarding state licensed or certified appraisers and was required to be in effect by January 1, 2015. He said the Board was also adopting a rule to address appraisers' duties when testifying in a court proceeding.

Mr. Hales went through all of the changes in the rule. Some of the changes he mentioned were cleaning up the language in the rule, clarifying language, eliminating grandfather clauses and establishing new requirements. He outlined the three classifications of appraisers, namely, registered trainee real estate appraisers, licensed residential real estate appraisers, and certified residential real estate appraisers. He defined the role for each. He explained that a registered trainee had to document, within five years preceding their application, completion of at least 75 classroom hours of courses in subjects related to real estate appraisal. He said the courses were outlined in the rule. The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one to four non-complex residential units having a transaction value less than \$1 million and a complex of one to four residential units having a transaction value less than \$250,000. Applicants must meet education, experience and examination requirements. Subsequent to being licensed, every licensee must meet the continuing education requirement annually. A certified residential real estate appraiser classification applies to the appraisal of residential properties of four or less units without regard to transaction value or complexity. Subsequent to being certified, every licensee must meet the continuing education requirement annually.

Mr. Hales said the entire set of rules were reviewed by a federal subcommittee and advised the Bureau this was the approach they wanted them to take. He talked about the new requirements, which included a supervisor for trainees and not being able to repeat the same course twice in order to receive credit. Other new requirements include an Associates Art degree or higher for a licensed residential real estate appraiser classification or a Bachelor's degree for a certified general real estate appraiser classification. He pointed out that the new requirements will apply to those who are new to the profession beginning January 1, 2015. All of these changes were discussed in open Board meetings, and postcards were sent out to all appraisers. There was no opposition to this rule. There is no fiscal impact.

Vice Chairman Patrick said he assumed the banks required the adoption of the recent Appraiser Qualification Board (AQB) changes mandated in federal law and regulation regarding state licensed or certified appraisers. **Mr. Hales** responded that in order to participate in a federal loan transaction, the appraiser must meet certain federal requirements. He said the worst case scenario would be if Idaho appraisers were not certified, no one in Idaho could get a federal loan. **Senator Martin** asked Mr. Hales if these changes were good for Idaho and for the Board of Appraisers. **Mr. Hales** said that by raising qualifications and certifications, this was a benefit for the State.

Senator Lakey commented he appreciated the optimism of Mr. Hales, but he thought the changes were overregulated. He questioned page 219, Subsection(e) relating to credit toward education requirements, which may be obtained through completion of a degree in real estate from "an accredited degree-granting college or university that has been approved by the Association to Advance Collegiate Schools of Business" (Association). He said that Mr.

Hales had defined "accredited" quite well. Why do we have to have the Association versus accreditation? **Mr. Hales** said the requirement came from the federal government, and was almost a template that was provided by the federal subcommittee. He said he would be happy to follow up with the Board and federal regulators to find out if they have any discretion.

Senator Lakey questioned the time period of "within the preceding five years" and was wondering why there was such a short time period allowed. **Mr. Hales** said it was his understanding that the educational requirement should be recent because if not, the applicant would have to repeat the education. **Senator Martin** wanted to know if the legislative action came from Congress or a department within the government. **Mr. Hales** said these changes were mandated by the federal government subcommittee.

Senator Goedde expressed a concern that if the requirements were stricter, would it decrease the number of appraisers in the State. He further stated he thought real estate deals may fall apart due to the lack of qualified appraisers. **Mr. Hales** and **Senator Goedde** discussed the possible decline in the number of appraisers due to the added requirements and the increase or decrease in home sales.

Vice Chairman Patrick commented that he did not like overregulation, but there were certain rules that we had to follow in order to obtain a federal loan, and he asked Mr. Hales for any follow up comments. **Mr. Hales** said the Board recognizes the changes were necessary in order to maintain the profession.

Senator Guthrie asked if there was anything in the numerous bullet points that were beyond or in addition to what the federal or state levels would require. He said that without having something in the rule regarding federal lending, it almost looked like it was self-governing. Unless an appraiser is certified to appraise a property whenever there is a federal loan involved, then the appraiser could not be involved. **Senator Guthrie** said he thought the market would take care of that issue without the rule. He asked Mr. Hales to explain. **Mr. Hales** said the rules will only affect new applicants and indicated that anyone currently in the profession has already met the requirements. He said he was not aware of anything in the rules that were beyond what was asked by the federal government or the State. The requirements are mandated by the federal government. If for some reason Idaho did not continue to meet the requirements, the federal government could decertify the State and none of the appraisers could perform an appraisal for any federal loan.

Senator Goedde asked Mr. Hales if the House approved this rule. **Mr. Hales** responded, "they approved it."

MOTION:

Senator Schmidt moved to adopt **Docket No. 24-1801-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. **Senator Martin** voted **nay**.

**DOCKET NO.
24-2501-1301**

Rules of the Idaho Driving Business Licensure Board, beginning on page 234, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said there were no changes to the pending rule and it was being adopted as originally proposed. The proposed rule conforms to H 127 passed last year that allows the Board to collect fees to pay the Idaho State Police for background checks. Portions of the rule are clarified for the benefit of the business. The business can rely upon a permit that the apprentice has met qualifications. This takes the burden off business owners to collect the information. He is not aware of any opposition. There is no fiscal impact.

Senator Schmidt asked what "satisfactory driver's license record" meant. **Mr. Hales** said the definition was on page 239, section 250.3 of the pending rule book. He said "an unsatisfactory record includes, but is not limited to, two moving violations in the past 12 months, or suspension or revocation of a driver's license in the last 36 months, or a conviction involving alcohol or controlled substances within the last 36 months."

Senator Martin asked if the regulations applied to school districts with a driver's training program. **Mr. Hales** said the regulations only applied to private driving schools.

MOTION:

Senator Martin moved to adopt **Docket No. 24-2501-1301**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0401-1301**

Fee Rule of the Idaho Board of Cosmetology, beginning on page 2, was presented by Roger Hales, Bureau of Occupational Licenses (Bureau). **Mr. Hales** said there were no changes to the fee rule and it was being adopted as originally proposed. This rule clarifies the rule for schools and inspections associated with new school applications. The rule adds a clinical definition for "hands on", which relates to practice by a student. Board members are volunteers and the Bureau provides support for cosmetology schools. Inspection rules associated with new schools have been relaxed. Expenses have been less than revenue from license fees.

The Board is proposing a change relating to the inspection of schools within 30 days of their application, but not before the building of the school is completed. There is no opposition, but there may have been some concern about the fee reductions. This rulemaking is anticipated to reduce the amount of dedicated fund fees collected annually by the Board of Cosmetology by approximately \$119,905. There is no fiscal impact on general funds.

Senator Schmidt asked if, since the Board was reducing fees, they had made projections for their budget for the next five years. **Tana Cory**, Chief of the Bureau of Occupational Licenses, said the Board monitors and adjusts their fees as needed.

MOTION:

Senator Schmidt moved to adopt **Docket No. 24-0401-1301**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senator Guthrie** suggested the Board look at fees and balances and consider waiving fees for someone who has been in the program for a long time.

**DOCKET NO.
24-0701-1301**

Relating to a Fee Rule of the Idaho State Board of Landscape Architects, beginning on page 13, was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said the Idaho State Board of Landscape Architects was amending Rule 300.01 to clarify the passing score of the approved examination due to a comment received and considered on the proposed rule. The application deadline has been eliminated and the exam language has been updated to recognize a national prepared and conducted exam, but allowed other exams as necessary. Exam regulations have been reduced. The exam administrative fee has been eliminated because the Board no longer handles the exam. This rule provides flexibility in Board meeting dates.

The text of the pending rule has been amended in accordance with Idaho Code § 67-5227. Only those sections that have changes that differ from the proposed text are printed in the bulletin. The original text of the proposed rule was published in the September 4, 2013 Idaho Administrative Bulletin, Volume 13-9, pages 179-181.

Senator Schmidt asked about the removal of any standardization for exams and the minimum passing score for each section of the exam which was determined by the examination provider. He said he thought that, according to the rule, the Board could write their own exam and score it. He said there was no protection. **Mr. Hales** indicated the cost to create an exam is approximately \$150,000. The wording in the rule, he explained, allows the Board the latitude to approve other examinations it deems appropriate. This is not a usual scenario and the Board has no intent of creating their own exam.

This rulemaking is anticipated to reduce the Board's dedicated fund by approximately \$225 per year based on the number of examination applicants in the last calendar year.

MOTION:

Senator Guthrie moved to adopt **Docket No. 24-0701-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** voted nay.

S 1204

Relating to Rights and Privileges of Veterans and the State Employee Personnel System (PERSI) was presented by David Fulkerson, Interim Director, Division of Human Resources. **Mr. Fulkerson** said this proposed legislation addressed the clarification of the current language for the application of veterans' preference points added to the passing score of an examination for veterans applying for classified positions. Preference is given by awarding 5 points to an eligible veteran or spouse or 10 points to an eligible disabled veteran or spouse. Current language addresses the preference points as a "percentage" rather than a whole number. Veterans' preference points have historically been applied to the passing score of an examination as a whole number of 5 or 10 points and not as a "percentage". The term "percentage" before points creates a lower outcome if the total exam score is less than 100 points. The proposed legislation removes the term "percentage".

MOTION:

Senator Martin moved that **S 1204** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Martin** will carry the bill on the floor of the Senate.

S 1205

Relating to Idaho Real Estate Law, was presented by Jeanne Jackson-Heim, Director of the Real Estate Commission. **Ms. Jackson-Heim** said this was housekeeping legislation, which added a definition for "regular employee", modified the definition of "state or jurisdiction" to include the District of Columbia, and clarified references to day and time. She indicated that at the print hearing of this bill, Senator Lakey asked for some clarification on the proposed definition of "regular employee".

She said the license law provides an exemption from licensure for regular employees of the owner of a property, or what is sometimes referred to as the "for sale by owner" exemption. An employee of the owner is exempt, but an independent contractor is not exempt. The proposed definition would clarify the difference between an employee and an independent contractor for the purposes of determining whether the exemption applies, based on whether or not the employer withholds payroll taxes. The language was based on the Utah definition of the same term and is consistent with how the Commission has interpreted and applied the exemption.

She also mentioned it was not necessary to have a written document in order to have a contract for hire under the common law. If someone agreed to work for an employer and the employer agreed to pay the person in exchange for services, that would be an implied contract, which is still considered a contract.

MOTION:

Senator Goedde moved that **S 1205** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Vice Chairman Patrick** adjourned the meeting at 2:53 p.m.

Senator Patrick
Vice Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 06, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>RS22743C1</u>	Relating to Property - Homeowner's Association	Senator Jim Rice
<u>RS22695</u>	Relating to the Public Works Construction Management Licensing Act	Wayne Hammon, Exec. Dir., Idaho Assoc. Gen. Contractors
<u>RS22819</u>	Relating to Payday Loans	Senator Lee Heider
<u>RS22535</u>	Relating to Eminent Domain Proceedings	Senator Chuck Winder
<u>RS22768</u>	Relating to PERSI	Don Drum, PERSI
<u>RS22797</u>	Relating to Agreements Between Suppliers and Dealers of Farm Equipment	Senator Patrick
<u>RS22782</u>	Relating to Driver's Licenses	Senator Tippets
<u>RS22787</u>	Relating to Veterans	Pam Eaton, Idaho Retailers Association
DOCKET NO.	Pending Rules	
<u>07-0701-1301</u>	Rules Governing the Installation of Heating, Ventilation, and Air Conditioning Systems	Steve Keys, Deputy Administrator, Building Safety
<u>17-0209-1301</u>	Rules Relating to Medical Fees	Patti Vaughn, Industrial Commission
<u>17-0210-1301</u>	Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security for Compensation - Insurance Carriers	Jane McClaran, Industrial Commission
<u>17-0211-1301</u>	Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security for Compensation - Self-Insured Employers	Jane McClaran, Industrial Commission
<u>18-0150-1301</u>	Adoption of the International Fire Code	Mark Larson, State Fire Marshal

[33-0101-1301](#)

Rules of the Idaho Real Estate Commission

Jeanne
Jackson-Heim, Real
Estate Commission

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 06, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. He welcomed all and explained there were changes in the order of the agenda.

RS 22535 Relating to Eminent Domain Proceedings was presented by Senator Chuck Winder. **Senator Winder** said this legislation would require any department, public subdivision, or agency seeking condemnation of an owner's property via eminent domain proceedings, to compensate the property owner for expenses and fees related to defending themselves against a condemnation action, and to be awarded by a court of proper jurisdiction, fees and expenses related to the defense of the legal action pending against them. The fees and expenses could be awarded by the court as project plans may be amended by the department of jurisdiction during the litigation seeking condemnation of the owner's property. There should be no impact to the general fund. However, he said, there could and likely would be a fiscal impact to dedicated funds.

In response to a question about the appraisal process by Vice Chairman Patrick, **Senator Winder** stated the property owner would still have to go through the appraisal process. The courts would decide the value of the property and what damages could be paid for attorney's fees because the property owner still has to pay for the original expenses. This legislation allows the judge to revisit the fee phase and actually reimburse the property owner for expenses, even after the department of jurisdiction may have changed the design.

Senator Winder said the use of eminent domain was limited. **Senator Winder** explained that if the departments would do their homework up front and develop plans that were not changed two or three times, this probably wouldn't be an issue. There could be no impact or a significant impact upon dedicated funds. If the department of jurisdiction made changes three or four times, the department would be responsible for litigation and the cost of expert witnesses that might be involved. **Senator Winder** noted that the idea is to discourage departments from changing things that are adverse to the property owner and to encourage the departments to be willing to protect property rights of owners during the process.

Senator Cameron asked what the fiscal impact would be if this provision had been in place and used a year ago. He noted the Department of Transportation and state agencies or local units of government could use eminent domain. Property taxes and transportation funds could be impacted and he wanted to know whether other funds would be affected. **Senator Winder** said he has known of at least two or three eminent domain cases involving state or local jurisdiction. He said the attorney and engineering fees could add up to tens of thousands of dollars for the

total litigation process. **Senator Cameron** said he supported printing this RS, but he would like to have some examples of the fiscal impact, if and when the bill came back to the Committee.

MOTION: **Senator Patrick** moved to send **RS 22535** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 22743C1 **Relating to Property** was presented by Senator Jim Rice. **Senator Rice** said currently homeowners associations (HOA) enforce covenants and restrictions in subdivisions by fining individual homeowners for violations of covenants and restrictions. Frequently, these fines are levied despite homeowner attempts to comply with the covenants and without any process other than a letter informing the homeowner that they will be fined. The fines are then enforced through liens on the homeowner's real property. This bill puts reasonable requirements in place that protect the homeowner from arbitrary and capricious actions by the HOA and provides a set of standards that courts can use if there is a dispute regarding the validity of the fine in a subsequent lien foreclosure action. There is no fiscal impact.

Senator Rice said he was personally aware of instances where homeowners were not given enough time to correct a violation of the HOA covenants, conditions and restrictions (CC&Rs) and a lien was placed against their property, even when they were trying to bring their property into compliance. Apparently, this is a widespread problem. **Senator Rice** said this bill would require a number of steps before a homeowner could be fined. The rules for imposition of fines has to be in the CC&Rs. There has to be a majority vote of the HOA board at a meeting prior to imposing a fine. The vote would have to be preceded by a 30-day written notice. If a homeowner was working on correcting a problem, they cannot be fined. Frequently, when a property management company is hired, they keep the fine money. However, the money cannot be used towards employee salaries.

Senator Guthrie asked how we would define "good faith". **Senator Rice** responded that if there is a fine imposed and the case goes to court on an action to collect the fine, the implied covenant of good faith is a general presumption that the parties to a contract will deal with each other honestly and fairly, so as not to destroy the right of the other party or parties to receive the benefits of the contract.

MOTION: **Senator Guthrie** moved to send **RS 22743C1** to print. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 22695 **Relating to the Public Works Construction Management Licensing Act** was presented by Colby Cameron, representing the Idaho Association of General Contractors (IAGC). **Mr. Cameron** said this bill updates Idaho Code to allow for Construction Manager/General Contractor contracts on publicly funded building projects. It does so while maintaining the safeguards and integrity of the public works contracting process.

Mr. Cameron said this change will allow public entities to enter into guaranteed maximum price commitments with construction managers. Under this type of arrangement, the contractor is bound to a maximum price for the total project and assumes responsibility to control construction costs and takes the risk of cost overruns. Doing so removes much of the price uncertainty and results in significant savings for the taxpayers. Projects are often completed on time and under budget. This is different than what is done now. Currently, the public entity cannot use the same contractor in the pre-construction and construction phases of the project. This is not a new concept. Private projects and public road projects use guaranteed maximum price commitments. Also, he commented, this method was used in the redesign of the Idaho Capitol. About 15 other states already have similar statutes in place. The previous project delivery method and the built-in protections, like responsible bid processes in the code, will still apply. This bill has no impact on the

state General Fund and should result in significant savings to those public entities (school districts, cities, counties, and the State) engaged in construction projects.

MOTION: **Senator Patrick** moved to send **RS 22695** to print. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

RS 22768 **Relating to PERSI** was presented by Don Drum, Public Employee Retirement System of Idaho (PERSI). **Mr. Drum** stated that on November 20, 2012 PERSI received a determination letter from the Internal Revenue Service (IRS) for the PERSI Base Plan. A determination letter is the IRS's statement that the terms of the plan (PERSI's statutes and rules) are in accordance with applicable federal statutes to qualify the plan as a qualified governmental pension plan under Section 401(a) of the Internal Revenue Code (IRC). The determination letter was issued subject to PERSI making certain statutory and rule changes. This bill addresses the statutory changes.

Idaho Code § 59-1306 states that the plan will be administered in accordance with certain enumerated subsections of Section 401(a) of the IRC. This bill will add references to Subsection 36 and Subsection 37 of § 401(a) of the IRC. Subsection 36 was added to the IRC in 2006 and Subsection 37 was added in 2008.

Subsection 36 provides that a plan is not disqualified if it allows for a distribution to a person age 62 or older who is not separated from employment. The PERSI plan generally does not allow a person to collect retirement while still working, except for limited circumstances for part-time elected or appointed officials. Subsection 37 requires that the qualified plan treat a participant who dies while performing qualified military service as if he had resumed work and then died. The PERSI plan does that in Idaho Code § 59-1302(23) (definition of military service).

Mr. Drum said the bill will also add a statement that the plan shall be administered in accordance with the Employee Retirement Income Security Act (ERISA) vesting requirements of § 411(e)(2) of the IRC. That section requires 100 percent vesting upon a plan termination or upon complete termination of all employer contributions. These sections of the IRC already apply to PERSI, which is a qualified governmental retirement plan. This bill clarifies these requirements by adding references to these sections. The potential impact of the amendments to the General Fund and retirement system funds is considered negligible.

MOTION: **Senator Martin** moved to send **RS 22768** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 22797 **Relating to Agreements Between Suppliers and Dealers of Farm Equipment** was presented by Roger Batt, representing the Pacific Northwest Hardware and Implement Association (PNWA). **Mr. Batt** said the Idaho Equipment Dealer Protection Law was passed to protect farm equipment dealers from changes imposed by farm equipment manufacturers, if those changes are substantial and negatively impact the dealer's business. This legislation provides clarification to the original intent of the statute by prohibiting suppliers from "substantially changing the competitive circumstances" of the dealer agreement and prohibiting changing the relationship between the dealer and manufacturer without good cause. The legislation also adds clarity to ensure that persons interpreting this law understand that the terms of a dealer agreement do not impact the determination of whether there has been a "substantial change in the competitive circumstances of the dealer agreement."

He explained dealer agreements are often referred to as "contracts of adhesion". This label is assigned because most agreements are structured as a "take it or leave it" proposition made by the manufacturer to the dealer. This is especially the case with respect to major manufacturers such as Deere, New Holland, Kubota and others. The other reason these agreements fall into the "contract of adhesion" category is that virtually all of them give the manufacturer the right to unilaterally amend the dealer agreement or the policies that govern the day-to-day relationship between the manufacturer and the dealer. Manufacturers routinely exercise these rights. **Mr. Batt** said the result is that dealers often sign contracts based on business expectations, even if the dealer agreement permits the supplier to make future changes that impact the business's expectations. Due to this reality and the significant potential for unfairness, the Legislature has previously determined that independent retail businesses operated by these dealerships are vitally important to the economy and welfare of the State of Idaho and that the dealer's agreements should be subject to regulation to protect the interests of these independent dealerships (this is stated explicitly in Idaho Code § 28-24-101).

Mr. Batt went on to say that regulation of dealer agreements through the dealer protection statute has the purpose of creating protections for the dealers against unfair treatment by the manufacturers. He said the PNWA closely monitors the dynamics of the relationships between dealers and manufacturers to determine if an action strategy is necessary to add additional protections or adjustments to dealer protection statutes or to see if issues can be worked out without amending statutes. Farm equipment dealers each have a geographic Area of Responsibility (AOR). This not only is defined in statute as a geographic area of retail, but more thoroughly represents an area of retail assigned to that dealership in the dealer agreement with the manufacturer (e.g., a store in Twin Falls has a geographic area assigned to it by the manufacturer to sell equipment to customers and to meet market share requirements by the manufacturer).

Mr. Batt explained that for decades, dealers have understood that once they are assigned an AOR by the manufacturer, that this AOR belongs to them to conduct business and to meet market share requirements by the manufacturer. Dealers also understand and recognize that they cannot restrict trade within another dealer's AOR and that someone from one AOR might sell equipment to a customer in another's AOR. Dealers have accepted this as a part of doing business within the free-trade system. What dealers are not accustomed to, and the driving force behind this legislation, is that there has been a manufacturer that allowed a dealer to build another dealership within an existing dealer's AOR. This occurrence has been fully recognized by many PNWA members as wrongful, unethical, harmful to existing business owners, and not in conformance with the intent of Idaho's Dealer Protection Law. It is understood by a dealer that if they are going to get into the equipment dealership business and be issued a particular AOR and be held responsible for selling machinery within that trade territory, that they are going to spend a lot of capital building a building, buying inventory, investing in employees, and paying for other expenses. With an investment such as this, a dealer is not anticipating another dealership being allowed into the same AOR to establish a physical presence and out-compete that business that has already been established. **Mr. Batt** said this would no doubt substantially change the competitive circumstances and the dealer's relationship with the manufacturer if this were to happen. This has happened here in the State of Idaho very recently. This is why the PNWA is asking for this legislation to be passed as they have a few dealers who are already being financially impacted by this occurrence. It is also the legal opinion of the PNWA that the manufacturer who entered into a dealer agreement to allow a different dealer to build a dealership within another dealer's AOR violated the current intent of the Dealer Protection Law. The manufacturer disagrees because they stated that this was allowed in the Dealer Agreement.

There is no fiscal impact to the General Fund. **Vice Chairman Patrick** thanked Mr. Batt for his informative presentation.

MOTION: **Senator Guthrie** moved to send **RS 22797** to print. **Senator Cameron** seconded the motion. The motion carried by **voice vote**

RS 22819 **Relating to Payday Loans** was presented by Senator Lee Heider. **Senator Heider** reviewed the components of this proposed legislation. **Senator Heider** said this legislation would require that no additional fees be collected by the lender for renewal of loans. A limit of 25 percent of the monthly gross income of the borrower would be the maximum of any payday loan, as proven by the borrower. Payday lenders will not present the borrower's check to the depository institution more than twice. This proposed legislation allows borrowers to enter into an extended payment plan to complete their payments at no additional charge. Written disclosures have to be provided to a borrower before loan approval and funds can be disbursed. There is no fiscal impact.

Senator Heider said the Department of Finance, lobbyists, Money Tree Lending and others all agreed these changes would protect borrowers and lenders.

Vice Chairman Patrick asked whether a borrower could pay off the loan at any time. **Senator Heider** said that the loan could be paid off at any time. **Vice Chairman Patrick** asked what the interest rate would be on an amortized loan. **Senator Heider** replied that the fees were paid when the loan was obtained and there would be no additional interest fees on the remaining balance.

Senator Goedde asked what happened after two electronic payments were returned unpaid. **Senator Heider** said the borrower would have the option of converting the loan to an amortized loan and a payday lender could not charge treble damages. **Senator Goedde** asked what would happen if someone took out a loan with the intention of never paying it back; what were the options available for a payday lender? **Senator Heider** said if the borrower was not willing to accept a payment plan, then the lender would lose their money. **Senator Goedde** commented this was certainly an opportunity for fraud and something for law enforcement to consider.

Senator Schmidt referred to Section 4, Subsection 4 where it stated that a payday lender cannot charge interest or additional fees as part of an extended payment plan, except as permitted in Idaho Code. He wanted to know whether interest was accrued as part of the extended plan. **Senator Heider** explained the fees were charged when the loan was initiated. When the balance was due, no interest could be charged for the extended payment plan. **Senator Guthrie** commented that when a borrower was charged fees for the initial loan and the loan was converted to an extended loan, there was no additional interest to be gained by the lender. **Senator Heider** said the loan was interest free because the fees were paid when the loan began. The borrower could pay off their loan in four segments.

MOTION: **Senator Martin** moved to send **RS 22819** to print. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED
GAVEL: Chairman Tippets passed the gavel to Vice Chairman Patrick.

RS 22782

Relating to Driver's Licenses was presented by Chairman Tippetts. He gave a brief history, and he said this was brought to him by a constituent who operates a private driving school. There are a number of private driving schools in the State and at one time they were administered with the public driver training schools through the Department of Education. In 2009, however, that arrangement was changed so that private driver training schools are now administered under the Bureau of Occupational Licenses. When that happened, their license fees dramatically increased. Now fees are in the range of \$500 or \$600 because private driving schools have to be self-sustaining. **Chairman Tippetts** said this legislation would require that \$5 (to offset costs) of each \$15 fee paid for a Class D driver's training permit be paid to either the driver training account in the Public School Fund, (if the person is taking driver's training from a public school) or to the Bureau of Occupational Licenses Fund for deposit in the State Treasury (if the person is taking driver's training from a private driving school).

Chairman Tippetts explained that currently, this \$5 is paid to the driver training account regardless of whether the student is enrolled in driver's training through a public school or through a private driving school. Private driving schools are now asking that out of the \$15 fee that \$5 of the fee that currently goes to the Department of Education be sent to the Board of Occupational Licenses to help offset the cost of their licenses. The private driving schools feel that the \$5 fee is fair because it is paid by those who are going to take driver's education from them. If someone is taking driver's training at the public school, the \$5 would still go to the public school. It is estimated that approximately \$25,000 per year would be credited to the Bureau of Occupational Licenses fund rather than to the driver training account.

Senator Schmidt asked how this would work when a person applies for a driver's training permit through a private driver's training school. **Chairman Tippetts** said that in a previous draft more of the process was outlined, but that stipulation was taken out so the Bureau of Occupational Licenses could determine the best process in order to identify that information. **Senator Goedde** asked what the driver training account was used for. **Chairman Tippetts** said this money helps to defray the cost of driver's education at public schools. He commented that public schools have other sources of funding. There is another \$125 that goes to the public schools that the private schools don't receive. **Senator Goedde** asked whether the money went to the school districts or the Department of Education. **Chairman Tippetts** said the money went to the individual school districts, he thought, but he would find out.

MOTION:

Senator Schmidt moved to send **RS 22782** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

RS 22787

Relating to Veterans was presented by Pam Eaton, Idaho Retailers Association. **Ms. Eaton** said this legislation clarifies that private employers may give preference to the hiring and promoting of veterans. She said a private, non-public employer may give preference in the hiring and promotion of employees to those who are eligible for preference under the provisions of Idaho Code § 65-503. She said veterans and disabled veterans; a widow or widower of any veteran, as long as he or she remains unmarried; and the wife or husband of a service-connected disabled veteran, if the veteran cannot qualify for any public employment because of a service-connected disability, are eligible for preference. There is no fiscal impact.

MOTION:

Senator Lakey moved to send **RS 22787** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**

**PASSED
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick.

**DOCKET NO.
07-0701-1301**

Rules Governing the Installation of Heating, Ventilation, and Air Conditioning Systems (HVAC) was presented by Steve Keys, Deputy Administrator, Division of Building Safety (DBS). **Mr. Keys** said this docket from the HVAC Board (Board) adopts the 2012 versions of the International Mechanical Code (IMC), the International Fuel Gas Code (IFGC), and Parts V and VI of the International Residential Code (IRC). Taken together, these codes form the regulatory backbone applicable to HVAC installations in Idaho. **Mr. Keys** said like the adoption of the electrical code docket discussed in his last appearance before the Committee, the HVAC Board and the DBS approached the adoption process by forming a collaborative committee consisting of representatives of all facets of the HVAC industry, the home building industry, local regulatory authorities, realtors, and members of the Idaho Legislature. This committee became known as the HVAC Collaborative (Collaborative) and met several times in the process of arriving at amendments to the codes that enabled the group as a whole to endorse the adoption of the 2012 mechanical codes. The DBS and Board express gratitude to the members of the HVAC Collaborative for their efforts.

DBS has received no comments subsequent to publishing the proposed rule in the Administrative Bulletin, and they are aware of no opposition to the docket as of this date.

Senator Goedde asked how members of the Collaborative were selected. **Mr. Keys** said that a notice was posted for all who were interested in volunteering. **Chairman Tippetts** said the rule allows alternate material to be used if, for example as outlined on page 71(f), a "dryer duct may be constructed of 0.013 (30 gauge) or equivalent if prefabricated 0.016 (28 gauge) ducts and fittings are not available." **Mr. Keys** said that sometimes items are not available at a local market or there may be a changeover in the manufacturing process and this rule gives the Board some leeway.

MOTION:

Senator Goedde moved to adopt **Docket No. 07-0701-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** asked that Mr. Keys meet with Mr. Stevenson to correct the misspellings in the RS, namely, the word "gauge".

**DOCKET NO.
07-0209-1301**

Rules Relating to Medical Fees was presented by Patti Vaughn, Industrial Commission (Commission). **Ms. Vaughn** said the primary changes in this rule are currently in effect by a temporary rule adopted July 1, 2013. She noted that pages 139 through 141, Idaho Code § 72-803 require physician payments for workers' compensation medical services to be based on the Resource Based Relative Value Scale (RBRVS), which is a reimbursement method used by the Centers for Medicare and Medicaid Services (CMS). There are two main components to RBRVS. First, CMS assigns each coded procedure a numerical relative value unit (RVU) based on the work, practice, and malpractice expenses associated with providing that service. Second, a monetary conversion factor is determined by the Industrial Commission. The allowed amount is the assigned RVU multiplied by the corresponding conversion factor. **Ms. Vaughn** pointed out that the table appearing on pages 139-140 showed the conversion factors assigned to each medical service category. **Ms. Vaughn** explained the edits appearing in the code ranges in Surgery Groups 2 and 3 are only to correct an error, restoring the conversion factors to what has already been in effect since July 2008. No other adjustments are proposed to the physician conversion factors for fiscal year (FY) 2015. Over the last few years the Commission has worked toward reducing both the number of conversion factors and the disparity between the service categories. An analysis of 2012 charge data, however, revealed that an increase to the medicine categories would allow an amount exceeding what most providers are currently charging for those services. After collaboration with the Advisory Committee and the Idaho Medical Association, it was agreed that no change is indicated at this time. The Commission will seek

new data and review again for FY 2016.

Ms. Vaughn said Sections .031.03 (page 139) and .031.06 (page 141) are housekeeping changes only. On pages 141-142, the Commission adopted a pharmacy fee schedule effective July 1, 2013. The standard for reimbursement is the Average Wholesale Price (AWP) plus a dispensing fee. The adopted dispensing fees were disputed by pharmacies as too low. After collaboration with the Idaho State Pharmacy Association and the Commission's Advisory Committee, the dispensing fees were adjusted from \$2 to \$5 for brand name drugs and from \$5 to \$8 for generic drugs. A \$2 dispensing fee will now be allowed for prescribed over-the-counter medicine filled by a pharmacy. The Commission requests approval of this rule to help ensure access to care for injured workers and adequate compensation to physicians and pharmacies providing that care.

Senator Guthrie asked what the difference was between the brand name and the generic drug increases. **Ms. Vaughn** said a generic drug has a higher dispensing fee, but the cost of the brand is lower. The cost of the dispensing fee for a brand name drug is lower, but the cost of the drug is higher. **Senator Guthrie** commented this was an incentive for the pharmacist, not for the consumer. **Senator Goedde** said the RVRBS was designed with a single conversion factor, but through the urging of certain segments of the medical community, the rates have been artificially adjusted for these conversion factors. He said he applauded the Industrial Commission for trying to bring the rates back into some kind of normal range.

MOTION:

Senator Schmidt moved to adopt **Docket No. 07-0209-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0210-1301**

Relating to Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security for Compensation - Insurance Carriers was presented by Jane McClaran, Industrial Commission (Commission). **Ms. McClaran** said this pending rule change incorporates suggestions from Dennis Stevenson, Administrative Rules Coordinator, to achieve consistency among state agencies and simplify the rule itself. These changes include: hours of operation and office location, compliance with the Public Records Act, and the removal of actual reporting forms in the appendix. This last change is because the form itself is not actually a rule, but rather the rule is that a particular form be used. It is a common practice among state agencies to state "substantially similar" to the form posted on the agency website, which is what the Commission has done throughout the rule. **Ms. McClaran** said it is important to note that the Commission is not proposing any changes to the current reporting forms. The Commission implemented Electronic Data Interchange Proof of Coverage 3.0 (EDI POC) on August 1, 2013. As a result, language is incorporated on the top of page 149 on data element reporting requirements. The Commission has been receiving POC information electronically since 1997 and many of these data elements were already being reported to the National Council on Compensation Insurance (NCCI). **Ms. McClaran** said the Committee also added language (subsection 10, page 149) which provides reporting requirements and timelines to meet the statutory requirements of Idaho Code §72-306A, relating to deductible policies.

MOTION:

Senator Goedde moved to adopt **Docket No. 07-0210-1301**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0211-1301**

Relating to Administrative Rules of the Industrial Commission Under Workers' Compensation Law - Security for Compensation - Self-Insured Employers was presented by Jane McClaran, Industrial Commission (Commission). **Ms. McClaran** said, similar to the proposed changes to rules governing insurance carriers, this pending rule also incorporates the suggestions from the Administrative Rules Coordinator, Dennis Stevenson, to achieve the same objectives of consistency and simplification of the rules governing self-insured employers. These include: hours of operation and office location, compliance with the Public Records Act, and the removal of actual reporting forms in the appendix. Again, the Commission is not proposing any changes to the current reporting forms. The Commission added a provision for a guaranty agreement under both the qualification and continuing requirements for self-insured employers (page 157 and page 160). This provides an additional tool when evaluating security deposit requirements applicable to employers organized as a joint venture or a wholly-owned subsidiary for analyzing the adequacy of those security deposits.

Ms. McClaran said next, under the Security Deposit with Treasurer section (top of page 158), language was added to clarify that securities are valued at par value and the frequency (semi-annually) that additional securities may be requested as a result of fluctuations in market value. This is followed in Subsection (c) by an exclusion of credit toward the security deposit requirements for excess insurance coverage provided by a surplus lines carrier (reference Department of Insurance Code). Finally, page 161, under Submit to Audits by Idaho Code, corrects a prior oversight when the rules governing insurance carriers and self-insured employers were split; the Commission neglected to include the same language in this rule that is in the insurance carrier rules, that identifies the Commission database as the authoritative source for proof of coverage for contractors.

Senator Schmidt asked about the provision stated on page 158 of the Pending Rules Book relating to approved securities. "No approved security shall be accepted for deposit above its par value. Additional deposits of approved security may be required semi-annually if the market value of an approved investment falls below its par value or if the total value of the employer's security deposit falls below the total security required to be maintained on deposit when calculated in accordance with this rule." He wondered how often the Commission determines the self-insured employer's total unpaid liability for compensation under the Workers' Compensation Law. **Ms. McClaran** said that page 157 describes the security deposits and indicates that value is par value. Market fluctuations may cause a security to be worth less today than par value.

MOTION:

Senator Schmidt moved to adopt **Docket No. 07-0210-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0150-1301**

Relating to Adoption of the International Fire Code was presented by Mark Larson, State Fire Marshal (SFM). **Mr. Larson** said the office of the SFM is a division of the Department of Insurance (DOI). He said this docket serves to adopt the 2012 edition of the International Fire Code (IFC) as a minimum standard for the State of Idaho. The IFC is a companion document to the Building Code. The DOI adopted the 2012 edition of the Building Code last year, with an effective date of January 1, 2014. This rule does the same for the IFC. He said the rule makes a few minor changes to the 2012 edition of the IFC, primarily to ensure local control over the permitting process, as well as any requirements for existing buildings. The other changes reflect either renumbering caused by the publishers rearranging the chapters or differences in the editions of referenced standards. None of the provisions related to driveways, water supplies or fire sprinkler systems would be changed by the adoption of this document. **Mr. Larson** said he knew of no opposition to this adoption. The SFM followed the negotiated rulemaking process.

Their intent to adopt the 2012 edition was widely known to all interested and affected groups. They received no input on this rule.

Senator Schmidt referred to page 202 and inquired about the language that was to be added "if required by the authority having the jurisdiction", and asked whether the local city-based or fire district that had the local jurisdiction. **Mr. Larson** replied the local government had the jurisdiction.

Senator Lakey asked Mr. Larson if he could provide more detail on the current requirements for residential sprinklers. **Mr. Larson** said Idaho Code § 39-4116 was passed several years ago by the Idaho Legislature. The code states that, "all single family homes and multiple family dwellings up to two units are exempted from the provisions of the International Residential Code that require automatic fire sprinkler systems to be installed." He said the law had not changed.

MOTION: **Senator Ward-Engelking** moved to adopt **Docket No. 18-0150-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 33-0101-1301 **Relating to the Rules of the Idaho Real Estate Commission** was presented by Jeanne Jackson-Heim, Real Estate Commission (Commission). **Ms. Jackson-Heim** said the pending rule was adopted as a temporary rule on June 13, 2013 and noted that the text of this new rule began on page 260. Last year, the Commission formed a work group with representatives from the Idaho Association of Realtors and real estate educators to review the continuing education requirements for licensees. This pending rule is one outcome of the joint realtor and Commission work group. The new language has been reviewed by and has the approval of the Idaho Association of Realtors. The first change in the initial paragraph slightly expands the purpose of continuing education to include professionalism and business proficiency of the licensee. **Ms. Jackson-Heim** said the second change appeared on the following page and added "business success" as an approved topic for continuing education. The Commission has been certifying courses under this rule change since June, and they have heard many positive comments from the licensees, as well as real estate schools and instructors, who are appreciative of having the benefit of some additional options for continuing education.

MOTION: **Senator Lakey** moved to adopt **Docket No. 33-0101-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:45 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 11, 2014

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes for January 30, 2014	Senator Cameron
DOCKET NO.		
<u>28-0207-1301</u>	(NEW CHAPTER) Rules Governing the Administration of the Idaho Global Entrepreneurial Mission (IGEM) Grant Program	Jeff Sayer, Director, Department of Commerce
<u>28-0301-1301</u>	(NEW CHAPTER) Rules of the Idaho Opportunity Fund	Jeff Sayer
<u>28-0304-1301</u>	(CHAPTER REPEAL) Rules of Business and Jobs Development Grant	Jeff Sayer
<u>07-0110-1301</u>	Rules Governing Certification of Approval of Electrical Products and Materials	Steve Keys, Deputy Administrator, Division of Building Safety
<u>07-0301-1301</u>	Rules of Building Safety - Adoption of 2012 International Residential Code and 2012 International Energy Conservation Code	Steve Keys
<u>07-0301-1302</u>	Rules of Building Safety - Amending the International Residential Code by Adding Alternate Method of Bracing Walls	Steve Keys
<u>07-0301-1303</u>	Rules of Building Safety - Amending the International Residential Code to Allow Owner-Occupied Lodging House Occupancies With Three or Fewer Guestrooms to Be Constructed or Remodeled	Steve Keys
<u>07-0301-1304</u>	Rules of Building Safety - Amending the International Residential Code by Deleting a Section	Steve Keys

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 11, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Cameron

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. He welcomed all and went over the agenda.

MOTION: **Vice Chairman Patrick** moved to approve the Minutes of January 28, 2014. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick.

DOCKET NO. 28-0207-1301 **(NEW CHAPTER) Rules Governing the Administration of the Idaho Global Entrepreneurial Mission (IGEM) Grant Program** beginning on page 243 of the Pending Rule Book, was presented by Jeff Sayer, Director, Department of Commerce (Department). **Director Sayer** explained the IGEM Grant Program funds commercialization grants which supports university and industry research partnerships for the purpose of enhancing technology transfer and commercialization of research and technologies developed at the universities to create high-quality jobs and new industries in the private sector in Idaho. The Department is experiencing positive momentum for the IGEM program with university and business leaders coming together with the State.

Director Sayer said the IGEM Council (Council) will release a Request for Proposal (RFP) outlining the process and requirements for eligible applicants to apply for IGEM Grant Program awards. The RFP will include requirements for performance measures and reporting. In selecting IGEM proposals for award, the Council will give greater weight to proposals that partner with Idaho-based entities. **Director Sayer** said that the Department has established an investment committee, which is overseen by the Council. The investment committee (Committee) consists primarily of business leaders. The universities have been asked to step aside from the Committee because of a possible conflict of interest. The Department has staffed the Committee with some very high-end business leaders and investors who can assure that the Department is extending solid grants. The Committee looks at the proposals submitted to the Council for final approval. One of the things the Department thought was important was the RFP process. Preference is given to applicants who have Idaho industry partners. **Director Sayer** went on to say the important piece was insisting that the grants have a matching component from industry partners. This has created an interesting transition for university researchers to know that in order to qualify, they have to have an industry partner and a match requirement. The match may be monetary or in-kind as established in the RFP. He said that funding for projects may be terminated by the Department at any time for failure to meet the program requirements set out in the RFP or for

the misuse of IGEM funds. Upon receipt of a written notice of termination from the Department, the grantee must immediately stop all expenditures of IGEM funds and return all unspent IGEM funds to the Department. Any commercialization revenue generated through the IGEM University Research Initiative and by IGEM funded research faculty will be distributed as outlined in Idaho Code § 67-4731. The Department will make a final payment to the grantee based on the work completed, allowable costs incurred, and the documentation provided by the grantee as required by these rules.

He said there are no changes to the pending rule and it is being adopted as originally proposed. There is no negative fiscal impact to the general fund.

Senator Lakey asked if the matching requirement amount, varied and whether there was an effect on the weighting of the decision-making process. **Director Sayer** responded that the matching requirement does affect the decision-making process. The Department has kept the matching amount flexible because in some situations, industry partners like to contribute in-kind matches. They also have people putting in cash. One of the transitions they are working through right now is calibrating what the weights should be and, clearly, those who are bringing in cash are scoring much higher in the process.

Chairman Tippets stated that Section 400 of the rule mentions that the Department can terminate a project for failure to meet the program requirements or for the misuse of IGEM funds. He added that any unexpended funds have to be returned to the Department. He asked if there was a provision to recover funds in the case of misuse of funds, not just returning what had not been spent, but recovering something that had been spent inappropriately. If not, is that something that would be advisable to have? **Director Sayer** said that is a good point, and his Department is very cognizant of the need to monitor the grant and research activities. He said the Department is requiring a quarterly report from the researchers on the status of their project. The Department relies heavily on the vice presidents of research from each university. The intent is to catch any misuse or research that has essentially gone idle and get those monies back. He said that was something they could take under advisement. The Department has not encountered any misuse yet.

Vice Chairman Patrick asked if Director Sayer worked with the state boards as well as with the universities, or directly with the university. **Director Sayer** replied the Department works directly with university representatives and there is a member of the state board on the council. Most of the Department's work is done with the university and the vice president of research.

Senator Guthrie asked if Director Sayer could go over the parameters for the grants and whether there is a minimum, maximum or a range. **Director Sayer** replied that the process was intentionally competitive. This was the biggest announcement to the universities. As the Department went through this process, they decided they were not going to divide the money up by three and send it to the universities. The Department has put people on the committee who are stringent about how grant money is to be spent, and that yields a strong rate of return for a viable project. There is not a minimum or a maximum range. During the second round of grant proposals, out of 12 proposals that were submitted, only 1 was invited back to be a finalist. The message the Department wanted to send was that these grants were not meeting the criteria because they either needed stronger industry relationships, stronger industry partners or they needed to be closer to commercialization before the money would be expended. **Director Sayer** said the competitive process is fairly thorough. What the Department found after the first round of grants were funded, was the universities oftentimes had larger projects that required larger amounts of money. The Department is asking the universities to reapply for another round and to ask for \$200,000 to \$300,000. Instead of investing in ten grants, the focus will be narrowed.

Senator Lakey asked Director Sayer if the goal was to have one application period for an Request for Proposal (RFP). He also asked if the Department wanted to give out multiple grants or keep funds fluid? **Director Sayer** said that last year, because it was the end of the fiscal year, there was one grant cycle and their objective was to distribute the money before the end of the fiscal year. This year the grant cycle was initiated in order to have multiple grant cycles if necessary. There is no set structure, but the intent is to have as many cycles as needed, and the Department has planned on having a more consistent structure. The idea would be to have at least two grant cycles during the year. We want to be responsive to projects as they surface and make sure the funds are available. **Senator Lakey** asked if the goal was to have a pool of funds to distribute every year and if there were funds that carried over. **Director Sayer** replied he would love to roll over the funds, but he said we do not have that luxury inside of the state appropriations system. We have \$950,000 in grant money that comes through commerce and the objective is to deploy those funds by the end of the year.

MOTION:

Senator Goedde moved to adopt **Docket No. 28-0207-1301**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
28-0301-1301**

(NEW CHAPTER) Rules of the Idaho Opportunity Fund beginning on page 248 of the Pending Rules Book, was presented by Jeff Sayer, Director, Department of Commerce (Department). He said there are no changes to the pending rule and it is being adopted as originally proposed. There is no negative fiscal impact on the State General Fund. H100 formally established the Idaho Opportunity Fund in the Idaho State Treasury. In fiscal year (FY) 2014 the Idaho Opportunity Fund will be funded as follows: \$400,000 ongoing appropriation in the Department's budget (General Fund); and a \$3 million onetime funding in the Department's budget (General Fund).

These comprehensive rules will govern the Idaho Opportunity Fund as enacted in H100. H100 formally established the Idaho Opportunity Fund and added five new sections of Idaho Code (§ 67-4732 through § 67-4736). These rules are necessary to outline the specific parameters for the award and disbursement of Idaho Opportunity Fund grants to cities and counties that may be eligible for these funds.

Director Sayer said the local government must provide an allowable local match as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director has the authority to approve or waive other forms of local match requirements. He went on to say there are two "sister" agreements. One is the local government grant agreement which is entered into between the Department and one or more local governments. The other "sister" agreement is between the community and the company. This was done to stay within the Idaho constitutional boundaries, so that we are not giving money directly to a company. Company performance agreements will be entered into between one or more local governments and a grantee business. Many of the provisions of the agreements are parallel to one another. The intent of the Department is to have a three-way negotiation and agreement among the local governments, businesses, and the Department.

Funds will be disbursed from the Opportunity Fund to the local government as defined in the local government grant agreement and after the local government has demonstrated that the grantee business has complied with the terms of the company performance agreement. The Department works very closely with each entity in this process.

The Director will report to the Economic Advisory Council quarterly on the grant activity and performance. An annual report regarding the state of the Opportunity Fund, will be published no later than September 30 of each year. The report will contain information on the commitment of funds, disbursement and use of the funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created. The annual report will be made available to the Governor, the Joint Finance-Appropriations Committee (JFAC) and the public.

Senator Schmidt asked about the nature of the annual report that Director Sayer will give to JFAC. **Director Sayer** said their intent was to be completely transparent so they can reinforce the trust they want to build. He said what they showed in JFAC was a series of five or six deals that were in the process of establishing agreements with businesses and local governments. The Department has one or two final projects that will be closing in the next few weeks with others in the negotiation process. The challenge the Department faces is that they are making verbal commitments to these projects, subject to final arrangements and negotiations. Monies are being allocated from the \$3 million budget, with final documentation.

Senator Guthrie asked why this rule referred to the Director exclusively. He asked if the exclusivity was intentional or if there were other players involved. **Director Sayer** said the rule was purposely designed to say "the Director exclusively" and that was the biggest reason he was extending his thank you to the Committee for having that trust. If the Department had asked for \$30 million in the Opportunity Fund, the Committee would see the Department immediately wanting oversights and mechanisms through the Economic Advisory Council. Given the rapid demand they expected for the Opportunity Fund, the Department asked for the support of the Committee so the Department could be responsive. The Department was not sure how fast the deals were going to move forward and they felt like they needed to respond and adapt as situations arose. Oversight will begin once the grants start to be implemented.

Senator Schmidt commented that the beginning of the rule was skipped over where it said there was no appeal. He said that transparency was very important. **Director Sayer** replied that was not lost on him, he understood the burden, he will be careful and the Committee will see full transparency.

MOTION:

Senator Lakey moved to adopt **Docket No. 28-0301-1301**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
28-0304-1301**

(CHAPTER REPEAL) Rules of Business and Jobs Development Grant beginning on page 255 of the Pending Rules Book, was presented by Jeff Sayer, Director, Department of Commerce (Department). **Director Sayer** said the grants were issued through the Business and Jobs Development Fund to provide funding to Idaho cities and counties for infrastructure development and to support the retention of existing businesses and recruiting of new businesses to the State. In compliance with H100, the Department has adopted a new temporary rule. The new chapter, Idaho Administrative Procedures Act (IDAPA) 28.03.01, "Idaho Opportunity Fund," provides for the same funding with new and additional parameters. This chapter is repealed in its entirety.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 28-0304-1301**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0110-1301 **Rules Governing Certification of Approval of Electrical Products and Materials** beginning on page 10 of the Pending Rules Book, was presented by Steve Keys, Deputy Administrator, Division of Building Safety (Division). **Mr. Keys** said this docket stemmed from many comments and requests from Idaho industrial concerns requesting a re-evaluation of the existing requirements for the field evaluation of industrial machinery. The existing rule provides very limited options for approval on unlisted, unlabeled industrial machinery in Idaho. Given the revolution in manufacturing and the constant development and employment of new technologies, the existing language was restricting the use of new technology.

Under the new language, field evaluations would be done in accordance with recognized criteria, but the potential provider base is expanded to include registered professional electrical engineers who are not directly involved with the project in question. The consensus is that these engineers have the expertise to perform the service at a lower price than is currently available to the owners of the machinery. The Division believes the safety of the public remains protected with this rule, while barriers to Idaho manufacturers in competitive markets are potentially reduced. The docket also clarifies the ability of the authority having jurisdiction to perform the field evaluation. Previously, inspectors employed by local jurisdictions, were not empowered to conduct field evaluations.

MOTION: **Senator Ward-Engelking** moved to adopt **Docket No. 07-0110-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0301-1301 **Rules of Building Safety - Adoption of 2012 International Residential Code and 2012 International Energy Conservation Code** beginning on page 14 of the Pending Rules Book, was presented by Steve Keys, Deputy Administrator, Division of Building Safety (DBS). **Mr. Keys** said this docket reflects the adoption by the Building Code Board (Board) of amendments to the 2012 International Building Code (IBC), the adoption of the 2012 International Residential Code (IRC) with amendments, the adoption of the 2012 International Existing Building Code (IEBC) without amendments, and the adoption of the 2012 International Energy Conservation Code (IECC) with amendments. The adoption of these new versions of the building codes and amendments to the codes is the result of a very comprehensive collaborative process involving a multitude of interested parties known collectively as the "Building Code Collaborative" (Collaborative). Like the electrical and HVAC code collaboratives, this group worked long and hard through multiple meetings to arrive at a consensus reflecting a baseline requirement where all could agree. The formation of the Collaborative and its initial success led to the formation of the other groups. **Mr. Keys** said, with the chair's permission, he would defer to Mr. Andrew Bick, the Chairman of the Building Code Board and Mr. Arlan Smith the DBS Building Program Manager, to address any technical questions the Committee may have.

Senator Lakey thanked Mr. Keys for citing other codes and dates and asked if the 2012 code was the most recent. **Mr. Keys** said "yes".

MOTION: **Senator Guthrie** moved to adopt **Docket No. 07-0301-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1302**

Rules of Building Safety - Amending the International Residential Code by Adding Alternate Method of Bracing Walls, beginning on page 25 of the Pending Rules Book, was presented by Steve Keys, Deputy Administrator, Division of Building Safety (DBS). **Mr. Keys** said this docket, again from the Building Code Board (Board) puts in place a separate amendment to the 2012 IRC, allowing an alternative methodology for wall bracing. The Board decided to run this docket separately to assure that adoption of the code would not be adversely affected should opposition to this amendment become significant. **Mr. Keys** said he would defer to the technical experts to address any technical questions the Committee may have.

Vice Chairman Patrick asked Mr. Keys to explain the term "underlying bracing". Mr. Keys deferred to Jason Blais, City of Boise and a member of the Idaho Code Board. **Mr. Blais** explained underlying bracing was another option and outlined simplified methods of bracing a house. Included is sheeting a house and the percentages of sheeting and whether hold downs are needed. In the current code, the bracing provisions changed and are over-restrictive. By simplifying this area of the new code, this allows more options for designers and builders.

Senator Lakey asked Mr. Blais to explain the options outlined on page 29, section 2(l) wall bracing. **Mr. Blais** said R602.10 was the more complicated option and would only apply to the high seismic areas of the State. He said the other two options will be replaced with "wall buildings shall be braced in accordance with this section, or when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method". This option would apply in the less seismic areas of the State, which would allow for a more simplified method of bracing. **Senator Lakey** asked about the American Plywood Association (APA)-Engineered Wood Association System Report SR-102. He was concerned that this was not a specific part of code. **Mr. Blais** answered this was not code, but a published industry document. He indicated that this is an update to make things cleaner. The system report mirrors what the wall bracing R602.12 says, but there are a couple of minor options. There is a system report that is updated consistently throughout the year.

MOTION:

Senator Guthrie moved to adopt **Docket No. 07-0301-1302**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1303**

Rules of Building Safety - Amending the International Residential Code to Allow Owner-Occupied Lodging House Occupancies With Three or Fewer Guest Rooms to Be Constructed or Remodeled beginning on page 32 of the Pending Rules Book, was presented by Steve Keys, Deputy Administrator, Division of Building Safety (DBS). **Mr. Keys** said this docket amends the International Residential Code (IRC) by modifying an existing exception to Section R101.2. This changes the code requirements by allowing owner-occupied lodging houses, most commonly known as bed and breakfasts, with three or fewer guest rooms, to be constructed in accordance with the IRC for one- and two-family dwellings. The affected structures must install smoke alarms and carbon monoxide alarms as required by the IRC in one and two family occupancies. The code provision prior to amendment would allow owner-occupied lodging houses with five or fewer guest rooms, but would also require a fire sprinkler system. There was an error made in the promulgation of this rule, in that the limitation should have reflected five or fewer guest rooms instead of three. The Building Board (Board) intends to run a temporary and pending rule after sine die to correct the error.

MOTION:

Senator Goedde moved to adopt **Docket No. 07-0301-1303**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1304**

Rules of Building Safety - Amending the International Residential Code by Deleting a Section beginning on page 39 of the Pending Rules Book, was presented by Steve Keys, Deputy Administrator, Division of Building Safety (DBS). **Mr. Keys** said this docket amends the IRC by deleting Section R501.3 and its exceptions. This section pertains to fire protection of floors, and is a new section of code. Mindful of its obligation to protect public safety, the decision was made by the Building Board (Board) to move forward with code adoption with the fire protection elements intact. The amendment was done separately to allow any opposing parties the ability to champion or oppose the specific amendment. The amendment deletes language that would require ceilings in most unfinished basements to be drywalled and taped. The language found in the code was added at the behest of firefighters concerned about the possibility of collapsing floors in the event of fire. The typical engineered flooring joist burns through much faster than the traditional 2' x 10' dimensional lumber joist, so the drywall was added for fire resistance. A copy of the code section is provided as a handout (see attachment 1). The Board feels that requiring the finishing of the ceiling is cost prohibitive and that the ceiling would have to be removed and redone if the basement were ultimately finished. **Mr. Keys** indicated this rule applied mostly to eastern Idaho.

Senator Schmidt asked for a clarification of the adoption and incorporation by reference of the document, which deleted a section and if that meant that engineered floors did not have to have a sheetrock finish. **Mr. Keys** responded, "yes".

MOTION: **Senator Schmidt** moved to adopt **Docket No. 07-0301-1304**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:** Vice Chairman Tippetts passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:16 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 13, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1252</u>	Relating to Worker's Compensation	Senator Davis
<u>S 1203</u>	Relating to Clarification on Definition and Implementation of Holiday Paid Leave	David Fulkerson, Interim Director, Human Resources
PRESENTATION	Euskadi-Idaho Trade Agreement (Basque Country)	Gloria Totoricagüena, Coordinator, PNWER Idaho Council
PRESENTATION	International Trade Managers, Department of Commerce	Jeff Sayer, Department of Commerce

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 13, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:32 p.m. and he welcomed everyone.

INTRODUCTION OF PAGES: **Chairman Tippets** introduced the new Senate Page, Lindsay Bolinder. He explained that she would be asked to tell the Committee a little about herself at the next meeting. **Chairman Tippets** said a few words about Hunter Markus, outgoing Page. He thanked Hunter for his service to the Senate and called him to the podium to explain to the Committee what he had learned. **Mr. Markus** said he had learned that Senators want to do the best for the people of the State. He also said he learned how smoothly things ran when everyone worked together. He thanked the Committee for a great experience. **Chairman Tippets** presented Hunter with a letter of recommendation from the Committee, a card and a Senate watch.

APPROVAL OF MINUTES: Due to time constraints, the approval of the Minutes for January 30, 2014, was continued to the meeting of February 18, 2014.

S 1203 **Relating to Clarification on Definition and Implementation of Holiday Paid Leave** was presented by David Fulkerson, Interim Director, Division of Human Resources (DHR). **Mr. Fulkerson** said the proposed legislation addresses two main topics: First, paid holiday leave, which defines the amount of leave for full-time employees working flexible (non-traditional) schedules. For example, a four-day, ten-hour schedule, differentiates between agency-required and employee-requested work schedules. The second topic addresses the exception to the overtime definition for time worked on a holiday for non-benefited Fair Labor Standards Act (FLSA)-exempt employees.

He said that in order to qualify for paid holiday leave, an employee must contribute to the Public Employee Retirement System of Idaho (PERSI) (Chapter 13, Title 59) or the optional retirement program (Chapter 1, Title 33). This is not new and is currently in Idaho Code § 59-1603(1) and § 67-5302(22).

Mr. Fulkerson explained that on page 3, line 19(a) of the bill with regards to an agency-required work schedule, a full-time employee will receive eight hours of paid holiday leave. However, if the agency requires the employee to regularly work more than 8 hours on a day on which the holiday occurs, they will receive paid holiday leave for the number of hours they would have been scheduled to work on that day. He explained that on page 3, line 25(b), when a full-time employee requests a non-traditional work schedule, and regularly works more than eight hours on a day on which a holiday occurs, they will receive eight hours of holiday paid leave. To complete the normal workweek of 40 hours, the appointing authority

may require employees to work an alternate schedule during the week in which the holiday occurs or allow them to use accrued vacation or compensatory time.

Mr. Fulkerson noted that on page 3, line 33(c) regarding a part-time work schedule, part-time employees will receive paid holiday leave equal to 20 percent of their budgeted pay period hours divided by 2. This means a part-time employee will receive a minimum of four hours paid holiday leave, but it is not to exceed eight hours. This is currently addressed in the DHR rule 073.04.c and 073.04.e. If this legislation is adopted, DHR will need to update these rules.

Mr. Fulkerson went on to explain that on page 3, line 38, employees who are eligible for paid holiday leave and who work on a holiday, receive both paid holiday leave and overtime compensation pursuant to Idaho Code § 59-1607 and § 67-5328. If they work on either the designated or actual holiday, employees will receive compensatory time or paid compensation for either day; provided however, if they work both days the employee will only receive paid holiday leave and overtime compensation for one of the days.

He noted that on page 3, line 46, there was no change in meaning or application for executive employees, but the wording was different. On page 4, line 1, non-benefited non-exempt employees (see new definition on line 16) who work on a designated or actual holiday will receive paid compensation or compensatory time at the rate of one-and-one-half hours for each hour worked. An employee who is required to work both days will receive overtime compensation for one of the days.

Mr. Fulkerson said that on page 4, line 27, the overtime work definition moved time worked on holidays and put it at the end of the definition (line 36) and made an exception for non-benefited exempt employees (see exempt definition on page 2, line 28).

He said the State of Idaho is more generous than the FLSA law which requires we include overtime as time worked on holidays. The State provides compensatory time for exempt employees. Exempt employees are not eligible for paid compensation for overtime, but receive compensatory time on an hour for hour basis. Currently, if non-benefited exempt employees work on a holiday, they receive compensatory time for hours worked on a holiday and will not be paid for all the hours they worked that week. This exemption from overtime work makes it possible to pay those employees at the rate of one hour for each hour worked on a designated or actual holiday.

Senator Guthrie asked Mr. Fulkerson if there was a clear mechanism to delineate between employee-requested and agency-requested schedules or was scheduling driven by the employee. **Mr. Fulkerson** said his Division has tried to make allowances for those agencies who require an employee to work four day ten-hour weeks, due to coverage for a particular schedule. For example, the Idaho State Police has to have troopers on the road, which is a mandated work schedule versus those employees who voluntarily want to work a flex schedule. The expectation is that the agency clearly spells out the mandated schedule versus an employee-requested schedule. Traditionally, the agency has a written agreement with the employee that says an employee has to flex back when there is a holiday or the agency has the ability to change the schedule at any time given the needs of the agency.

Senator Guthrie then asked Mr. Fulkerson to explain unfunded liability and how it differs with this new legislation. He asked if there was a significant difference.

Mr. Fulkerson said they polled agencies that have employer-mandated work schedules. Should they have to pay those two hours off for ten-hour employees,

the cost would be about \$427,000. There are several other agencies who are implementing four ten-hour day schedules. "We wanted to make sure that it was clear that the money was in the budget should we have to pay that off in one year. It is expected that agencies pay holiday leave and holiday hours worked within their existing budgets."

Senator Lakey wanted to know if this was an effort at consistency and not a mandate from the federal government through the FLSA. **Mr. Fulkerson** said the State handles holidays differently than the federal government. The State says that time worked on those holidays is overtime, whereas, the federal government does not. Employees accrue vacation time and sick leave in two separate accounts. Sick leave is standard and vacation time is based on years of service. Every five years an employee's vacation accrual increases. **Senator Lakey** wanted to know if we were talking about vacation leave versus holiday pay. **Mr. Fulkerson** said there are ten official State holidays each year for which employees are eligible. **Senator Lakey** asked if Mr. Fulkerson was saying that vacation time is what employees accrue if they have to work on the holiday. **Mr. Fulkerson** gave an example of a regular employee who works a regular week, five days a week for eight hours a day. Monday is a holiday and the employee does not come to work on Monday and gets paid for eight hours at the regular rate. There are the 32 hours for the rest of the week that the employee works and that is how the employee gets the 40 hours. However, if the employee then works on the holiday and is an administrator or professional employee and gets one hour of regular pay for every hour of overtime, then the employee would get eight hours of pay for that day and eight hours of compensatory time if they worked the full eight hours on the holiday. If the employee only worked six hours on the holiday, then they would get six hours of compensatory time. The calculation would be one-and-one half times for a qualified employee.

Senator Cameron asked about the last sentence in the revised fiscal note, which says "It is expected that agencies will manage and pay holiday leave and holiday hours worked within their existing budgets." He asked if Mr. Fulkerson knew of any state agencies where that would be impossible or difficult to do? **Mr. Fulkerson** said the expectation would be that the agency would cover holiday leave and holiday hours worked in their existing budget. He did not know of any agency where this would impact their budget. All of the agencies they visited with thought they could cover these expenses within their budgets. The key would be just those agencies where, as an employer, they are mandating that an employee work a flexible schedule. Most of the agencies work eight hour, five-day-a-week schedules.

Senator Cameron referred to lines 46 through 49 relating to executive employees and asked Mr. Fulkerson to explain the differences between a regular full-time employee and an executive employee. He asked why there would be some differences. **Mr. Fulkerson** explained that several years ago there was a cap instituted on comp time of 240 hours. Executive employees were exempt, which included bureau chiefs and above (who supervise more than two employees). They may work 60 hours a week, but are paid for 40. There is no overtime and no comp time. Traditionally, they don't fill out a timecard.

Senator Cameron referred to lines 44 and 45 saying that it indicates an employee who is required to work both days shall only receive holiday paid leave and overtime compensation for one of those days. He queried why not overtime for both days. **Mr. Fulkerson** gave an example when Christmas falls on a Sunday and the official holiday is on Monday. If the employee is required to work on Sunday and Monday, one day is considered a traditional work day and the other day is considered overtime. **Senator Cameron** said he was still confused and asked if that was because the official holiday is on a Monday and Sunday is treated as a regular work day. **Mr. Fulkerson** said, "yes". **Senator Cameron** stated that if an

employee had to work both Sunday and Monday and Monday was a technical holiday, the employee would be paid for both days, and only one would count as a holiday. **Mr. Fulkerson** said, "yes."

Senator Goedde said the \$427,000 looked like an annual cost and asked if the cost was a potential one-time cost. **Mr. Fulkerson** said should we have an employee who normally didn't get paid for overtime (employer-mandated schedule), but now gets 10 hours of work time and the state agency had to pay that (assuming everyone worked the same amount of time each year), that would be an annual cost in addition to what they are paying now. It will depend on whether they have to pay that amount. **Senator Goedde** said it is prospective, not retrospective, and **Mr. Fulkerson** replied, "yes."

Senator Guthrie wanted to clarify whether the \$427,000 represented the cost of the flex schedule "or will DHR schedule \$427,000 less in work time." **Mr. Fulkerson** said the distinction is if they had to pay for those hours, that would be an additional cost. It would be up to each agency to cover the costs. **Senator Guthrie** said the only way not to pay out the money was to have an employee take comp time. **Mr. Fulkerson** said, "yes", that was correct, rather than vacation time for those hours.

Chairman Tippets commented there could be a situation where employees have been working a four ten-hour week schedule for a period of time. **Chairman Tippets** asked **Mr. Fulkerson** if he was confident that will be clear in all cases whether the schedule was employer-mandated or requested by the employee. **Mr. Fulkerson** said he hesitated to say it is clear in all cases. Should the bill pass, we would have to make sure that all agencies did due diligence, to give correct guidance on good Human Resources practices for setting up these agreements on employer-mandated schedules. **Mr. Fulkerson** said when you hire an employee and you are mandating four ten-hour days, that is pretty clear. When an employee has requested a work schedule and the agency has an agreement with the employee, that allows the agency to flex employees back to a five eight-hour schedule as needed.

Vice Chairman Patrick said he still had concerns about the potential \$427,000 and that it should balance out better as we are not requiring people to work more. For a salaried worker overtime should not make any difference. **Mr. Fulkerson** said traditionally, as a state, we pay all employees hourly. Some employees are salaried, but most are hourly. If we have some agencies that are not flexing employees, then we should see some savings due to this change. We may see a little cost savings, and he said he hopes this was a little more clear and would help agencies better manage their comp time issues.

TESTIMONY

Dan Goicoechea, Chief Deputy for the State Controller's Office (SCO), said that in 1997 when they were audited, his office was told to work with the Legislative Service Office (LSO), Department of Finance Management (DFM), and the various agencies to come up with a plan for holiday paid leave. "We support this legislation." The SCO is put in a position of enforcing the legislation. The SCO does not have a policy plan. They are there to execute what the Legislature puts forth and what rules come out of the DHR and DFM. On behalf of Controller Woolf, he said, "we need clarity because there is an irregularity across agencies." Agencies need direction by the Legislature to clearly understand whether an employee self-initiated a work schedule or if the schedule was offered by an agency and how holiday paid leave should be implemented.

Senator Guthrie asked if in the past an employee worked ten hours normally and was only paid for eight hours on a holiday, if they were allowed to make up the two hours. **Mr. Goicoechea** said "yes" after the agency did a pre-pay and defined their payroll and policy. The difficulty at the SCO when processing a payroll transmission, is they do not know the specific policy of an agency. The goal is to show a complete 40 hours a week for full-time employees. Payroll officers need to make sure all are compensated for 80 hours within the pay period.

MOTION

Senator Cameron moved that **S 1203** be sent to the floor with a **do pass** recommendation with the amended fiscal note. **Senator Ward-Engleking** seconded the motion. The motion carried by **voice vote**. Chairman Tippetts will carry the bill on the floor of the Senate.

The amended fiscal note: There will be a one-time cost in the fiscal year (FY) 2015 DHR budget of approximately \$12,000 for programming changes to the State's payroll system. In addition it is estimated that the State may see an annual total funds cost increase of \$427,000. This estimated cost increase is based on information gathered from agencies that currently have employer-mandated flexible schedules; but are only providing a maximum of eight hours of holiday leave per holiday rather than holiday leave based on the employer-mandated flexible schedule. It is expected that agencies will manage and pay holiday leave and holiday hours worked within their existing budgets.

S 1252

Relating to Worker's Compensation was presented by Senator Davis. He explained the unusual approach to writing this bill. **Senator Davis** said Idaho Code Title 72 (Worker's Compensation and Related Laws - Industrial Commission) deals with the Industrial Commission (Commission) and Worker's Compensation. He said an employer can self-insure. The Commission has been wrestling with the language requirements to be self-insured. He was grateful for the Commission's willingness to work with his constituents. The Commission was rewriting the language that appears in Section 1 of the bill. Independent of their efforts, **Senator Davis** said he was involved in rewriting Section 1 of the bill. Senator Davis and the Commission collaborated and decided that if his bill passed and the Commission's bill passed, it would have been impossible for the Code Commission to shuffle this section together. They decided to put both sections in the same bill. Section 1 of the bill is for the Industrial Commission and Section 2 of the bill is for the Idaho National Laboratory. **Senator Davis** said the Commission went over Section 1 of the bill and they support this section. **Senator Davis** said he went over Section 2 of the bill and explained why he believed it was important to have that part of Idaho law by saying we need to give better language in dealing with companies and government subdivisions that are self-insured. He offered to carry the bill on the floor of the Senate.

Jane McClaran, Financial Officer, Industrial Commission, spoke about Section 1. She said the Commission proposed amendments to Idaho Code § 72-301 and was limited to Section 1. She said Section 2 is a new section proposed by Senator Davis. The Commission does not support or oppose that portion of the bill.

Ms. McClaran said the changes reflected in lines 23 through 26 of page 1 are clean-up only and have no impact on self-insured employers. What's restated here is current practice. The proposed language on lines 27 through 32 of page 1 is applicable to self-insured employers and mirrors the language on lines 8 through 12 of page 2, which is applicable to insurers. This change is intended to address an issue that has developed over time as financial investment markets have dramatically expanded, to include all sorts of investment options (derivatives, Treasury Inflation-Protected Securities (TIPS), Separate Trading of Registered Interest and Principal of Securities (STRIPS), etc). Neither the Commission nor the State Treasurer's Office tracks investment ratings or monitors changes in the

market value of these securities. The Commission developed a more restrictive list of acceptable security instruments (backed by the full faith and credit of the U.S. Government) and sought to eliminate acceptance of those higher risk securities. They have no resources dedicated to monitoring, or expertise to evaluate, other types of securities on an ongoing basis.

Ms. McClaran explained the second objective is to address the recent increase in insolvent insurers. She referred to Subsection 3 beginning on line 17 on page 2 which is new language; lines 17 through 23 provide a mechanism to convert securities of an insolvent insurer to cash. Lines 24 through 34 describe how funds are credited and accounted for, and lines 35 through 38 create an insolvent insurer fund. Currently, the security deposit continues to be held in a custodial account for an insurance company that no longer exists. The proposed cure is to convert the security deposit to cash, transfer funds to a newly created insolvent insurer fund (Subsection 4), track those deposits and accrued interest specific to the insurer, and pay future claims and reasonable fees until such time as the Commission determines those funds are no longer needed.

Chairman Tippetts quoted Subsection(b), line 22 on page 1, "An employer may become self-insured by obtaining the approval of the Industrial Commission, and by depositing and maintaining in a custodial account with the State Treasurer money or acceptable security instruments satisfactory to the Commission securing the payment" and said he questioned this statement. He said it was puzzling to him when we identify acceptable security instruments in two places in the bill. This raises the question, could there be acceptable security instruments according to the definition given later that are not satisfactory to the Commission or is the language redundant and could the language be removed without changing the meaning.

Ms. McClaran said the security requirements differ between self-insured employers and insurers. It is a simple computation for insurers, so it is very straightforward. For insured employers there are additional credits which are addressed in rule as far as what is adequate for a deposit.

Chairman Tippetts said he thought that the instrument could meet the definition of an acceptable security instrument. **Ms. McClaran** said it is not the instrument that is acceptable or not, it is the security deposit. **Chairman Tippetts** said that on page 1, "In lieu of such money or security instruments, the Commission may allow or require such employer to file or maintain with the state treasurer a surety bond" and if we are saying these instruments are not only acceptable but also satisfactory to the Commission, why do we say a surety bond may be required. **Ms. McClaran** said the surety bond is an insurance instrument that is one of the acceptable securities. So, either monies, U.S. Treasuries, or security bonds would suffice. If an employer elects not to have the monies or the U.S. Treasuries, in lieu of that they could elect to have a surety bond.

Senator Schmidt commented that since we have two bills that have been put together, are we just asking the Commission questions on Section 1 and Senator Davis a question on Section 2. **Chairman Tippetts** assured him he could ask a question of either party.

Senator Cameron said he wanted clarification about a self-insured employer who could invest with an appropriate level of security with the Treasurer. However, he said, if the Commission felt there was an increased risk, they could also require a surety bond. He asked if that would be an appropriate description. **Ms. McClaran** said the Commission has not mandated the type of security that has to be held. A surety bond covers a specific period of time and if the Commission determined that additional security was needed, "we would let the employer know the amount

and allow them to provide the acceptable instrument." The employer could elect what type of instrument so long as it was not issued from an affiliate. **Senator Cameron** said the language says the Commission may "allow or require", so at what point would the Commission require the use of a surety bond. **Ms. McClaran** said if a self-insured employer elected to have a surety bond and had it in place for many years and then wanted to change the type of security, "we would allow them to cancel the surety bond, but would not release it because it was coverage for the period of time that it was in effect."

Vice Chairman Patrick said he is familiar with the insurers and he asked if there had been a loss record. "Were there some companies that provided alternatives to the insurance companies?" **Ms. McClaran** said the Commission does not pay claims. The State Insurance Fund is separate from the Commission. The purpose of the Commission in requiring the security for payments for worker's compensation in the event a self-insured or insurer becomes insolvent, the security deposit is what is left to pay claims, because Idaho does not have an uninsured employer fund. **Vice Chairman Patrick** said he wanted a history of failures, and **Ms. McClaran** said she would provide a list if that would be helpful. **Vice Chairman Patrick** wanted to know if there was a strong reason to change the law due to failures. **Ms. McClaran** replied there had not been many failures. The reason for the change was due to the dramatic financial markets and all of the derivatives that are available. This will make the security less risky.

Senator Goedde commented that we are allowing self-insurers other options of security. **Ms. McClaran** said allowable security instruments have been applicable to both self-insureds and insurers. This does not expand them. **Senator Goedde** wanted to know if there was an option for a surety bond prior to this language being introduced. **Ms. McClaran** said "yes" that most self-insured employers have surety bonds. **Senator Goedde** said his understanding was that if an employer was self-insured they had to post a surety bond, and now we are giving employers the option of expanding the options. **Ms. McClaran** said that in prior years we had amended Idaho Code § 72-301 to separate the self-insured employers from the insurers. Other options were available then.

Senator Davis said in the audience were Brian Whitlock, Director of State Government Relations for the Idaho National Lab (INL) and Peggy Hinman, Attorney. He said the Leadership In Nuclear Energy Commission (LINE) was created by Governor Otter. The LINE Commission considered Section 2 of the bill. After the LINE Commission heard the reasons or policy concerns that exist today, the LINE Commission unanimously supported the principles in Section 2. **Senator Davis** explained there was a readily available market for employers to purchase this coverage. Things have drastically changed since then. The worker's compensation market that existed for nuclear energy employers has completely evaporated. Idaho law requires that employers provide coverage for their employees. When you look at the duty under Idaho Code § 72-301, the statute says we are going to allow a self-insured employer to post a cash bond with the Treasurer. With there being no market for coverage, the only thing the INL could do, was to negotiate and make a cash deposit with Liberty Mutual in the amount of \$4 million. In the event a claim is made that otherwise would have insurance coverage, there is the \$4 million deposit as security. Additionally, there is no bond, surety or insurance coverage, and there is a requirement that Batelle deposit \$5 million with the State Treasurer. That is \$9 million of working capital from Batelle which translates to 100 jobs. Federal law requires that the federal government pay these claims, (see page 2, line 9). In the event there is a claim made that otherwise would have had insurance coverage, that claim is paid through the federal government, not with an insurance policy and not from any deposits. **Senator Davis** said he hoped that with the passage of this bill we recognize that if an employer qualifies for a cost reimbursement contract

with the feds, and he referred to page 3, line 1, "which addresses payment of costs for the employer's worker's compensation program" that satisfies requirements for self-insurance. Liberty Mutual will release the \$4 million. The State will release the \$5 million, so Batelle can inject \$9 million in working capital to provide more jobs at the INL. Currently, self-insureds have to provide a three-year claims history. The problem is that the Department of Energy (DOE) periodically reviews who will be the primary contractor (the INL is owned by the federal government). The DOE contracts with another company to manage the assets and the programs of the INL. If the DOE makes a determination to make a change, and a new contractor comes in, the employer is unable to satisfy the three-year history requirement. The effect would be, as the law is currently written, that the INL is on an off-ramp to closure. We have removed the three-year average because there is a cost reimbursement contract with the federal government. That is why the LINE Commission sees this bill as valuable and so important.

Senator Goedde said that given the recent history of the federal government paying Idaho for expenses incurred, he wanted more information on how the cost reimbursement contract was set up. His concern was that there may be expenses from an insured worker and there may be years of delay in getting reimbursement from the federal government. **Ms. Hinman** said the method of collection for any claims that are incurred by the contractor are administered under the contractor's worker's comp program paid by the contractor. The contractor seeks reimbursement from the DOE for the cost that it has incurred. There is a more direct payment to injured workers without having to wait for the contractor to recover funds from the DOE. That is the way the program is set up to run. Any new contractors take over the obligation of past contractors, which would include the responsibility to cover any claims by former workers. **Senator Goedde** said he had another concern about a new contractor who assumes the claim from the prior contractor for an injured worker. **Ms. Hinman** explained that ultimately the DOE is responsible for the safety of the worker, for the management of the facilities and payment to the contractor to administer those obligations. Any previous claims, assuming the claim was legitimate and valid, that occurred, for example ten years ago, would be paid by the contractor. When the new contractors take over the operation of the facility, it includes the requirement that they pick up any past liabilities. **Senator Goedde** said that is a huge obligation for a contractor to assume, but as long as it is stated in the contract, that is not a concern of ours.

Senator Schmidt gave an example of a worker doing refrigeration work for a contractor and the contractor goes out of business and the worker gets retrained and is now doing plumbing. The worker puts in a claim for an injury he received from a previous employer and he tries to make a claim. How will that be administered? **Ms. Hinman** said that she assumed both contracts were under a cost reimbursement contract with the DOE, and **Senator Schmidt** said to assume that for clarification. **Ms. Hinman** said that if you assume the person was injured while working at the INL for a contractor who had a contract with the DOE, as this legislation is set up to address, then those claims that were rightfully incurred under worker's comp statutes would be paid by the incumbent contractor. **Senator Schmidt** asked what if the employee was working for INL and then went to Lewiston to dredge for the Corps of Engineers on a cost-reimbursement contract. Would that employer assume the claim? **Ms. Hinman** said assuming that the contractors with the Corps of Engineers takes advantage of the self-insurance provisions that are being proposed here today, then they would have coverage. The question would be how that claim would be proportioned under the workers comp statute. Prior injuries and percentages are sometimes assigned for workers who are injured, as they may have had an injury in the past that contributed to a future injury.

Senator Cameron asked if the State, as a matter of law, required the feds to

pay under the cost reimbursement contract. **Ms. Hinman** said she believe the self-insurance scheme put the responsibility upon the employer to administer the worker's comp program. As a matter of law, the State would require that adequate self-insurance be established. The State would have confidence that the claim would be paid with the existence of a contract. However, she was not sure, as a matter of law, if the State would be able to force payment and she was not sure how that would work where the employer is really the entity that is responsible for paying any claims.

Senator Cameron pointed out that on page 3, line 2 of the bill, the phrase that says "self-insurance status is to be granted as of the effective date" and wanted to know if that statement was restrictive. One could interpret that to mean an employer's self-insurance status is granted as long as the employer has met all the applicable rules, whether the Commission believes so or not. If the federal government refuses to pay based on cost reimbursement language with regards to the Commission, why would we not fall back on the requirement of a surety bond or other financial instrument. **Senator Cameron** said, in essence, what this law is saying is we don't have to set aside the \$9 million because we have this cost reimbursement contract. He said Senator Davis has made a compelling argument that we are tying up \$9 million that could be used because we have a cost reimbursement contract. But then we are also saying if the cost reimbursement contract does not work, we are going to fall back on the employer. If we are going to fall back on the employer, why shouldn't we have required some sort of financial instrument or protection.

Senator Davis referred to page 2, line 47, and said the employer will demonstrate to the Commission that security exists. That is the condition preceding the benefits that follow. This has been going on for decades and this is not something new that we have cooked up in order to attain self-insurance status. We have not experienced losses in Idaho. The Committee has heard from the Commission where other states have had problems, but Idaho doesn't have a default problem. The federal government says the State should set up their own program. We have a contractual duty. Each successor contractor has the same duty to assume the liability. If a company is not able to demonstrate to the federal government they have the financial muscle and the other professional skills, the company will not be awarded the contract. **Senator Davis** said we are not talking about a contractor that is submitting a bill to roof a house. An employer has the duty, under the program, to pay the claim pursuant to Idaho law. In the event of payment, the federal government makes the reimbursement. There is probably no one who has ever made a claim where there has been a problem. **Senator Davis** said the dollars are the same, whether they are through the cost reimbursement contract or have been deposited with the Treasurer's office. **Senator Davis** said we don't have the market today that we had in prior years. We cannot go out and get a bond. It is only cash. The Legislature has to decide if they have confidence in the long-term reimbursement program. The rules are not changing. There is no insurance market to go to. He said we can keep the \$9 million on deposit, if that is the will of this Legislature, but we will lose 100 jobs. "We don't want that in our State." Claims are not getting paid out of the \$9 million as they are paid pursuant to the cost reimbursement contract. "Why are we worried about the source of funds? We have \$9 million set aside and for what purpose?"

Senator Cameron said he appreciated Senator Davis pointing out the demonstration language which helped with his understanding. He has a concern that the Commission would have to determine that the cost reimbursement contract was sufficient. If it is not sufficient and the feds go into sequester or decide to not pay, then it falls back on the employer. What if the employer doesn't have the money. We have not asked the Commission to look at the employer. We have asked them to look at the cost reimbursement contract. **Senator Davis** said we have been through the longest sequestration in the history of our country and no claims went unpaid. **Senator Cameron** said it sounded like a mandate that the Commission approve an employer's self-insured status. **Senator Davis** said this was negotiated language with Liberty Mutual in order to be able to claw back the \$4 million that is on deposit. This was the language we were able to pull together in order to satisfy those concerns and to be able to put the money back to work.

Senator Guthrie asked if a contractor could not pay for whatever reason, and he could not get reimbursed, who advocates for the employee? **Senator Davis** said the program is a parallel program. They have to get approval for that part of the contract. We have not had the problem in the past. It is his understanding that there is no historical practice for anyone for non-payment.

Senator Schmidt asked if there were other dredging companies or hospitals in Lewiston that have cost-based contracts that would qualify under this statute. **Senator Davis** said when this bill was first written, the cost reimbursement contract was limited to the DOE. They had to pull back because there were other places that had federal contracts. He said he did not know if there are other cost reimbursement contracts elsewhere. What the statute says is we have to perform due diligence.

Chairman Tippetts said the new section is an alternative means of securing cost reimbursement contracts. He said he was puzzled about the language on page 3, line 2, when Senator Cameron referred to "self-insured status is to be granted as of the effective date of the qualifying contract or other instrument or as soon thereafter as the employer meets all other applicable commission rules." He asked what the other instruments were. "Are we talking about the standard way we provide a surety bond?" **Chairman Tippetts** said he thought we were talking about cost-reimbursement contracts. Why is the language referring to other instruments? **Senator Davis** said he did not know the answer, but he explained that when he ran this through the lawyers in order to satisfy them, each added language and we ended up with the language that is in the bill. He worked with colleagues at the Commission to make sure they saw the language and had input. There was a small stack of rewrites that included their guidance as well. **Chairman Tippetts** said it caused him some concern that we're saying that the self-insured status was to be granted as of the effective date of the qualifying contract or other instruments, when we don't know what the other instruments are. **Ms. Hinman** said one of the other considerations that Senator Davis went through was regarding the INL requirement of a three-year site contractors reimbursement contract. This language was intended to address the self-insurance status and the contractor does not have to wait until a three-year employee past history is established. They may have someone seeking to obtain self-insurance through a cost reimbursement contract. If there are other means of establishing insurance for the government contractor, this language would allow the three-year payroll history to be waived for a DOE contractor.

Mr. Whitlock said he thought that was what was envisioned with that language of "other instruments" to make reference to these cost-reimbursement contracts. This cost-reimbursement contract would serve as the instrument, either on the date that it is enacted or when the Commission determines that, "yes," this cost-reimbursement contract is a sufficient instrument and that all costs covered for Worker's Comp are covered under that cost-reimbursement contract. **Chairman Tippetts** said that what Mr. Whitlock was saying made sense, if a period is inserted after the words "qualifying contract", then it would read "self-insured status would be granted as of the effective date of the qualifying contract", which we understand to be the cost-reimbursement contract. But now we are saying "or other instruments". We are providing another option that is not specified or some other instrument that we are not identifying. A self-insured status could be granted if the employer meets all other applicable conditions and rules. **Mr. Whitlock** said "that is why we put it in the contract. We do have \$4 million in cash on deposit with Liberty Mutual." The deposit is to cover the past claims, but he said he thought that other instruments cover past claims. He said he thought the other instruments could include the cash deposit as an instrument with Liberty Mutual. **Chairman Tippetts** asked "since we are not identifying the other instruments, what qualifies as another instrument that would allow the Commission to grant self-insured status?" **Senator Davis** said, again, it is covered by the cost-reimbursement contract. The question of the remaining language is the effective date, not the qualifying event. There are two effective dates that could be examined by the INL. One is the date of the qualifying contract for the company. We would need to see what the Commission would require of the employer. The qualifier is the self-executing component after the employer met the qualifications. **Chairman Tippetts** said it was more clear to him. "We are not talking about the requirements for granting self-insured status, but the date at which that becomes effective once the other requirements are met." **Senator Davis** said it was important to demonstrate that the \$4 million was not needed in order to release the money

Senator Schmidt quoted the bottom of page 2, line 49, "self-insured worker's compensation program is covered by a cost reimbursement contract with the federal government and said "it seems like there are always sub-contractors of sub-contractors of sub-contractors." He asked if this is a sub-contractor who contracts with a bigger contractor who is actually working and getting their money from the DOE; is that covered? **Senator Davis** replied the sub-contractors do not receive that benefit. They must have a direct contractual relationship with the federal government in order to receive the benefit. Those employers otherwise still have to satisfy the standards of the worker's compensation statutes. They may be eligible separately to have their own self-insured program, but that would be Section 1 of the bill, not Section 2.

Senator Ward-Engelking said she was worried if a self-insured employer is not being reimbursed for claims, even though they have a contract with the federal government, what method is left or what security is left to pay those claims. She said she thought she heard Senator Davis say that the worker could go to court, but that puts the burden back on the worker. **Senator Davis** said one could make the same argument if an insurance company refused to make payment. That happens all of the time. There will be disputes from time-to-time. **Senator Davis** asked Senator Ward-Engelking if she believed that the federal government was at least as equal in the performance of its duties under the terms of its cost-reimbursement program as another. There has not been a default. In order to be eligible, an employer has to be able to demonstrate to the Commission that security for its self-insured worker's comp program is covered by a cost-reimbursement program. The plan is then administered and the payments are made. **Senator Ward-Engelking** said it seems as though there is a lot of red tape in dealing with the federal government and even though these claims may be at least valid as

far as the INL is concerned, it may take a very long time to get repaid for those claims. **Senator Davis** said the employee does not make the claim with the federal government, they make the claim through the program. There is a separate third party that actually administers the program. The program is not run by Batelle or the other contractors. A third party gets paid or reimbursed for those funds.

Chairman Tippetts said the Committee was five minutes over their allotted time, however if there were other questions the Senators had to help them with their vote, he would certainly hear them. He asked if there were any further questions and there were none.

MOTION:

Senator Cameron moved that **S 1252** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senators Schmidt** and **Ward-Engelking** voted nay.

Chairman Tippetts apologized to all about the misjudgment of time for this meeting. He explained the presentations were scheduled last to accommodate meetings on the House side. He said he wanted to reschedule the two presentations. He then introduced Gloria Totoricaguëna, Coordinator, Euskadi-Idaho Trade Agreement Pacific Northwest Economic Region (PNWER) Idaho Council. He asked her to introduce the people that were with her and he stated they could later talk about rescheduling another opportunity for the presentation. **Ms. Totoricaguëna** introduced Mr. Ander Caballero, delegate of the Basque government and Pablo Fano, International Commercialization of Basque Country, which provides opportunities for Idaho businesses interested in entering the European Union and Basque businesses.

Chairman Tippetts next called on Jeff Sayer, Department of Commerce, who introduced the International Trade Managers: Armando Oreano, who runs the Mexico Trade Office, and Eddie Yen, who is from the Taiwan Trade Office.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 3:08 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 18, 2014

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes for January 30, 2014	Senator Cameron
<u>RS22865</u>	Unanimous Consent to Send to State Affairs Committee, Relating to Health Care	Senator Thayn
<u>RS22852</u>	Unanimous Consent to Send to State Affairs Committee, Concurrent Resolution to Fund State Employee Health Savings Accounts	Senator Thayn
<u>RS22891</u>	Unanimous Consent to Send to State Affairs Committee, Proclamation Rejection of Rule	Senator Patrick
<u>RS22905</u>	Unanimous Consent to Send to State Affairs Committee, Relating to Exemption from Coverage from Worker's Compensation Law	Senator Johnson
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of William W. Deal of Nampa, Idaho, to the Public Employee Retirement System of Idaho Board, to serve a term commencing July 1, 2013 and expiring July 1, 2018.	William Deal
PRESENTATION	International Trade Managers, Department of Commerce	Jeff Sayer, Director of Commerce
<u>S 1312</u>	Relating to PERSI	Don Drum, PERSI
<u>S 1206</u>	Relating to Real Estate Continuing Education	Jeanne Jackson-Heim, Real Estate Commission
<u>S 1269</u>	Relating to Run-Off Insurers	Woody Richards, Idaho Insurance Guaranty Association

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 18, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:32 p.m. He welcomed all and went over the agenda. He mentioned we had a full agenda and that future agendas would also be full.

Chairman Tippetts mentioned that Senator Davis was going to ask for unanimous consent that **S 1252** dealing with worker's compensation, be sent to the 14th Order of Business for consideration of amendments. He said that anyone who wanted to look at the proposed amendments was welcome to see Senator Davis.

INTRODUCTION OF PAGE: **Chairman Tippetts** introduced Lindsay Bolinder, new Page for the Committee. **Ms. Bolinder** said she is a senior at Centennial High School and that she is the eldest of three children. She had been a competitive dancer for 15 years and decided to try cross country this year. She is a member of the National Honor Society, volunteers at St. Alphonsus Hospital and mentioned she loves to be outdoors. She thanked the Committee and said it was a privilege and an honor to have been selected. **Chairman Tippetts** thanked Ms. Bolinder.

APPROVAL OF MINUTES: **Senator Cameron** moved to approve the Minutes of January 30, 2014. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Chairman Tippetts explained this Committee no longer has the authority to send an RS to print and would be asking for unanimous consent on four RSs on the agenda.

RS 22865 **Relating to Health Care** was presented by Senator Thayn. He said this RS had been revised approximately three weeks ago. He explained the proposed legislation creates a simple format for medical retainer agreements to provide routine health care services on a contract, non-insurance basis which is exempt from regulation by the Department of Insurance (DOI). These services are otherwise known as "Direct Primary Care" under the Patient Protection and Affordable Care Act (PPACA), or as "concierge" medical services. A discussion ensued between **Senator Thayn** and **Senator Cameron** relating to medical retainer agreements and the definition of a medical advisor. **Senator Cameron** said he thought this RS would provide additional regulations, and he asked how this language would provide stability. **Senator Cameron** asked Senator Thayn if, under current law, providers expressed they were unhappy with their status. **Senator Thayn** said "no," but there have been problems in other states, and he was trying to head off problems before they started.

MOTION:

Vice Chairman Patrick asked for unanimous consent to send **RS 22865** to a privileged committee for printing. **Senator Cameron** objected.

RS 22852

Funding of State Employee Health Savings Accounts was presented by Senator Thayn. **Senator Thayn** said that this legislation directs the Department of Administration (DOA) to fund state employee health savings accounts for those employees who choose a high-deductible health policy. He referred to line 25 of the concurrent resolution and indicated the DOA commissioned the Milliman Industry Mortality Study and Analysis (MIMSA) that showed up to \$2,510 could be placed in each state employee's health savings account (HSA) without a significant change in the cost of the state employee health plan. He said the state employee health plan is one of the largest health care plans, and the funding of HSAs would have the tendency to stabilize medical costs by creating a cash market benefitting the Idaho economy. He said the traditional and Preferred Provider Organization (PPO) state plans will still be grandfathered under the Affordable Care Act (ACA), while a new high deductible plan will not be grandfathered.

Senator Schmidt asked Senator Thayn to explain the phrase on line 34 regarding some state plans that would be grandfathered and the new high deductible plan that would not be grandfathered. He also asked for a copy of the MIMSA study that was commissioned by the DOA. **Senator Thayn** indicated he could get a copy. **Senator Lakey** asked Senator Thayn to expound on the fiscal note which says there will be no fiscal impact. **Senator Thayn** explained that if an employee subscribes to a higher deductible, the policy cost would be reduced. He stated this proposed legislation gives state employees another option.

Senator Cameron wanted to know if it was Senator Thayn's impression that there was a higher deductible plan available for state employees that meets the ACA requirements. **Senator Cameron** also questioned lines 40 and 41 of the resolution which said the DOA was to fund state employee HSAs for those employees who choose a high deductible policy. He said it seems like the DOA is directed to pay or to fund those savings accounts at whatever level they would deem appropriate. He commented that the resolution did not say the State puts in the difference in savings from the high deductible plan through a regular plan and that leaves it open-ended. **Senator Thayn** said the language in the resolution was what the DOA preferred because it gave them some flexibility in adjusting the figures in the budget. **Senator Cameron** commented that Senator Thayn's statement that the difference is what would be paid in the HSA is not stated in this resolution and there is no provision in law, so the DOA could pay less or they could pay more. **Senator Thayn** replied this was a resolution and there are broad parameters and does not direct the DOA to do something specific.

Senator Cameron disclosed for the record, that he has an insurance license and he has sold a number of HSAs. He said there are some employers who will pay more for a high deductible HSA plan just because they believe it will save more money in the long run in deferred costs. **Senator Cameron** referred to Senator Thayn's statement to the Committee which was if an agreement is reached and this RS were to pass, the DOA would deposit the difference between the high deductible plan and the regular deductible plan into an HSA. Therefore, there would be no fiscal impact.

Senator Cameron declared a possible conflict of interest for the record, stating that although he does not have a pecuniary gain, he is an insurance agent and one could interpret his opinion to be conflicted.

Senator Thayn said that recognizing that medical costs are too high, an HSA is one way to bring down the costs. He said he may not have explained the proposed resolution as well as he could have and not as well as Director Luna. He was trying to explain the resolution to the best of his understanding. He said the MIMSA study showed we could have a high deductible policy without it costing the State any more to fund an HSA.

Senator Cameron said his concern was with Senator Thayn's response to Senator Lakey. **Senator Cameron** said "if your plan is to allow the DOA full ability, there should be a more accurate fiscal impact statement. If your plan is to have it restricted, then it should be listed in the resolution. It seems that Senator Thayn's comment contradicts the fiscal impact statement." **Senator Thayn** said there is no fiscal impact; the budget would not be increased for state employee insurance costs; and it would be no more than it is right now. The dollar amount will be the same and the amount of money spent on health insurance for state employees would not be reduced. The whole point was to make the budget neutral.

Chairman Tippetts mentioned the concurrent resolution could go straight to the floor or back to the Committee.

MOTION:

RS 22852 failed for lack of a motion.

RS 22891

Relating to a Proclamation Rejecting a Rule was presented by Vice Chairman Patrick. **Vice Chairman Patrick** explained this was a proclamation to reject a rule that was covered previously by the Committee which had to do with extra education credits required for licensure.

Senator Goedde asked for unanimous consent to send **RS 22891** to a privileged committee for printing. There were no objections.

RS 22905

Relating to Exemption from Coverage from Worker's Compensation Law was presented by Senator Johnson. **Senator Johnson** said this legislation was clean-up language and clarified some of the statutes referring to worker's compensation. He said the owner of a sole proprietorship and his family members working in his business are exempt from worker's compensation under Idaho Code § 72-212. This legislation clarifies that a single member limited liability company (LLC) that is being taxed as a sole proprietorship is also treated as a sole proprietorship for purposes of the worker's compensation exemption. The legislation will have no effect on the State General Fund, but could result in up to \$8,000 in lost revenues to the Industrial Commission (Commission) annually, if all single member LLCs were otherwise not recognized as sole proprietorships.

Senator Goedde questioned the fiscal statement and the possibility of up to an \$8,000 loss to the Commission annually, if all single member LLC's were otherwise not recognized as sole proprietorships. He commented there must be a substantial impact on the State Insurance Fund (Fund) if \$8,000 of the premium tax goes to the Commission. **Senator Johnson** said he and Senator Hill met with the Commission and went over this and asked what kind of fiscal impact this would have on the Commission. The Commission tried to do an estimate on how many LLCs are currently paying into the system and what the impact would be to their fund if they were not paying into the Fund. This is the amount the Commission gave to them. **Senator Goedde** said it is the estimated impact on the amount of premium tax paid to the Commission. He asked what the impact would be to the Fund. **Senator Johnson** said he could not answer that, but that he would go back to the Commission to get some more information for the fiscal note.

Senator Lakey wanted to know if the legislation was talking about the employment of family members in an LLC. **Senator Johnson** said "yes."

MOTION:

Senator Cameron asked for unanimous consent to send **RS 22905** to a privileged committee for printing. There were no objections.

GUBERNATORIAL APPOINTMENT:

The appointment of William Deal of Nampa, Idaho, to the Public Employee Retirement System of Idaho Board (PERSI), to serve a term commencing July 1, 2013 and expiring July 1, 2018 was presented by Bill Deal. **Director Deal** spoke about his background. He is a University of Idaho graduate and spent three years in the Army infantry. He was in the insurance business for 42 years. He was a member of the Idaho House of Representatives and became Chairman of the State Affairs Committee. During that time he was also on the Endowment Fund Investment Board. He left the House in 2007, and the Governor appointed him to the Department of Insurance (DOI). He was also appointed to the PERSI Board (Board) as a trustee. He said that one of the important issues to the Board is the operational plan, which is simple, but transparent. Return on their investments has been approximately 10 percent. The investment policy is very focused and the money is invested globally, with both fixed and international funds. He appreciates the monthly meetings, which are an opportunity for investment managers to tell the Board what is happening in the marketplace.

Senator Lakey commented he appreciated having Mr. Deal as a friend and a representative for Nampa.

MOTION:

Senator Lakey moved to send the gubernatorial appointment of William Deal to the PERSI Board to the floor with recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the appointment on the floor of the Senate.

PRESENTATION:

Presentation - Department of Commerce was presented by Jeff Sayer, Director, Department of Commerce (Department). This presentation was continued from the meeting of February 13, 2014. **Director Sayer** provided a 2014 legislative update for the Mexico and the Taiwan Chambers of Commerce divisions for the State of Idaho. He highlighted trade and Project 60. He said it was exciting to see that our economy is projected in 2014 to be \$62.4 billion. The economy is expected to be slightly above \$60 billion in 2013. International exports decreased this year, which was a concern for the Department. The semi-conductor business is a large part of our export, and those numbers were down. The agricultural and mining sectors are both up and showing some strong growth, which is encouraging. The tourism or 2 percent hotel tax was up substantially, which is used to market the State of Idaho. Those figures were up 8 percent over last year, which is a leading economic indicator of what is happening in our state.

Director Sayer then provided an update regarding the Idaho Global Entrepreneurial Mission (IGEM) program. He referred to the IGEM Annual Report. He indicated there was a list of the grants that were issued. There are three funding components. One is that \$2 million went to the Center for Advanced Energy Studies (CAES) as permanent, ongoing funding; another \$2 million is ongoing funding to the State Board of Education (Board); and the Department received \$1 million of ongoing funding that was used to help issue grants in conjunction with the Board grants.

Director Sayer said they highlighted a number of technologies that the Department invested in over the last year. In the initial stages, the Department spent a considerable amount of time looking at best practices and other state models. The State of Utah helped the Department since they have had a

similar program for several years. The Department learned one significant lesson. They found they needed more industry-funded research. **Director Sayer** referred to page 2 of the Annual Report and indicated the emphasis will be on the goals of building capacity and industry relationships. He said the Department at the IGEM level, will be spending an inordinate amount of time making sure they are strengthening industry relationships, attracting more industries, and continuing to help the universities build their research capacities. He mentioned the original intent of IGEM was to take our technologies into the marketplace where they can create jobs and new companies.

Next, **Director Sayer** talked about the Opportunity Fund. He referred to the Opportunity Fund Update slide. He said the fund was established last year and it was the first step into a performance-based incentive tool. He said the State does not hand out the reward until a company has actually delivered the results and delivered the jobs. He discussed the five projects in the Opportunity Fund. He said there was a tremendous amount of interest in this fund. He pointed out the annual return on investment that comes from these funds.

He said during 2013, the Department discovered it needed to reorganize because many of the things they were doing were based on tradition and historical patterns and assumptions. They realized there were other states that were ahead of Idaho and who had some very progressive ideas. The Department is trying to bring the industry voice to the table to help establish talent pipelines from our community colleges and universities that can meet the needs of the sectors that we want to make successful in the State. Other states have figured out how to have a cluster-based strategy, which essentially means they have identified the industry sectors and figured out how to make that sector successful.

Because the world is changing, the Department decided they needed to make changes, including looking at ways to align teams within two groups. The Department identified the business creation and the business expansion divisions. One group is in charge of creating new revenue for the State through tourism and sales. The other group focuses on helping existing companies and communities to be successful. In essence, the Department streamlined their divisions from seven down to three and eliminated two administrator positions. In the process, two new positions were created. The Department hired new employees from the private sector because they needed new perspectives. The Department wants to catch up to where the world is going and provide a supportive role to communities. The Department also wants to drive their relationships deeper with industry, having them guide the focus and strategy. Partnerships must take place with peers in the field and with the communities and leaders as they step forward. **Director Sayer** said he thought there were unlimited possibilities for this state.

Senator Goedde commented that he attended a conference sponsored by Toyota. They have a paid training program that involves eighth graders. If a student does not show up at school, there is a Toyota employee at his door asking why he is not at school. It is a great partnership and a good model. He said there is nothing about Canada or the North American Free Trade Agreement (NAFTA) in this report and we need more focus there. **Director Sayer** said "that one of the challenges we have extended to our team is that we have to evaluate the ruts." His challenge to them is that any organization that has done the same things for 20 years is going to be in a rut. The question is not "if", but "where". **Director Sayer** said that "one of the ruts we have identified is that for many years we have followed an international tourism marketing program that is geared towards Europe and Australia. We have been

spending close to 20 percent of our operating budget in the tourism division on what was actually 3 to 5 percent of business. We have to go north to maximize the Canadian relationship."

Senator Schmidt commented the IGEM report is wonderful, and that Mr. Sayer is describing how other states have done things. **Senator Schmidt** said the Department is learning from other states, but he will need for his role in oversight, a more clear balance sheet or an indication of investment return, which is what we are looking for in this state. He said he would like to see a different format. **Director Sayer** said there is a very specific outline in the report as to how the monies were spent. One of the underlying messages of the graphic in the front of the report is that there will be a number of years ahead where they will be making the investment. The returns are a few years away.

S 1312

Relating to Public Employee Retirement System of Idaho (PERSI) was presented by Don Drum, PERSI. **Don Drumsaid** that **S 1312** amends Idaho Code § 59-1306 by including additional references to sections of the Internal Revenue Code (IRC) applicable to the PERSI plan. This section states that the plan is to be administered to comply with the IRC sections. The new references to the IRC already apply to the PERSI plan because it is a tax-qualified retirement plan. The bill clarifies the references already added to the IRC. Making these statutory changes was a condition of the IRS letter that PERSI received. The IRS determination letter stated that the plan, as drafted, met the requirements to be a tax-qualified retirement plan.

The bill adds references to Subsection 36 and Subsection 37 of § 411(e)(2) of the IRC. Subsection 36 provides that a plan is not disqualified if it allows for a distribution to a person age 62 or older who is not separated from employment. He emphasized that Subsection 36 does not require that the plan allow someone to retire while still working, but it says the plan can allow for it. The PERSI plan generally does not allow a person to collect retirement while still working, except for limited circumstances for part-time elected or appointed officials. Subsection 37 requires that the qualified plan treat a participant who dies while performing qualified military service as if he had resumed work and then died. However, **Mr. Drum** said, the PERSI plan already does that in Idaho Code § 59-1302(23) (definition of military service).

Mr. Drum said that Section 411(e)(2) provides for vesting of benefits upon a plan termination or upon complete termination of all employer contributions. Section 411(e)(2) was also addressed in rules that PERSI presented to the Committee earlier in this session. Those rules were also amended as part of the determination letter process.

MOTION:

Senator Goedde moved that **S 1312** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry this bill on the floor of the Senate.

Relating to Real Estate Continuing Education was presented by Jeanne Jackson-Heim, Real Estate Commission (Commission). **Ms. Jackson-Heim** said **S 1206** is one of the outcomes of a collaborative work group comprised of real estate educators, agency staff, and representatives from the Idaho Association of Realtors. The work group was formed to discuss current issues in real estate education and how to better prepare our licensees to serve the public and their profession.

Ms. Jackson-Heim explained the bill has two primary components. The first involves required continuing education in order to renew a real estate license. Real estate licensees are on a two-year license renewal period. Presently, licensees must complete 16 hours of elective continuing education credit plus one required Commission core course every two years in order to renew or reactivate their license. However, the core course is developed by the Commission every year and includes instruction on law changes, a real estate case law update, and a hot topics section on various real estate-related matters. Because the core course is developed annually, but is required only once every other year, many licensees miss important information from the core course they did not take. Licensees need the most up-to-date information so they can better serve consumers, reduce their risk of liability, and improve their professionalism and business success. **S 1206** would change Idaho Code § 54-2023 to require the core course to be taken every year.

Ms. Jackson-Heim said there is a corresponding reduction in the elective hours from 16 to 12. The proposed changes allow for licensees to receive the most current required education while keeping the total number of education hours the same. The second substantive change pertains to brand new salesperson licensees in their first renewal or reactivation period. Licensees get a lot of new material thrown at them as they prepare for their real estate license exams, and the material is out of context because they haven't had a chance to apply that knowledge in the field. The work group identified a need to reinforce and expand on the pre-license material so the licensees can receive focused training on how to apply their knowledge to specific areas of real estate practice. This bill will accomplish that goal by requiring new licensees to complete a specified course of study for all their education hours for the first renewal period. Instead of 12 elective hours, there would be 12 hours of post license course work as well as the two annual commission core courses. The post license curriculum would cover such topics as preparing contract forms, agency law, ethics and professionalism, commercial real estate, and pricing and marketing. Again, the total number of required hours of continuing education would remain the same.

Ms. Jackson-Heim explained the bill also adds a definition of "post license course" in Idaho Code § 54-2004. There are other education-related changes in the bill. References to challenge exams and correspondence courses for continuing education are eliminated since the Commission no longer uses challenge exams, and likewise correspondence courses have been replaced by online classes. A requirement is added that the director of a certified real estate school must participate in a Commission-approved training session at least once every two years, similar to the present requirement for certified instructors. This will help the real estate schools stay in compliance with the license law requirements and provide better service to the licensees.

Finally, **Ms. Jackson-Heim** said the last change in **S 1206** relates to the expenditure of civil penalty monies collected by the Commission. The license law restricts the use of these funds to educational purposes for people who

already hold an Idaho real estate license. A slight modification to the language is proposed which would allow the Commission to expand use of these monies to also include pre-license education for people who are not yet licensed.

Senator Schmidt asked why words on lines 19 through 25 on page 5 were being eliminated. **Ms. Jackson-Heim** explained there was another part of the law that defined correspondence hours and that correspondence courses have been replaced with online courses. She said the Commission wanted to correct obsolete language.

Vice Chairman Patrick wanted Ms. Jackson-Heim to explain why a course must contain no more than 12 hours of instruction as outlined on page 3, lines 46 through 49 of the bill. He wondered what was wrong with more education.

Ms. Jackson-Heim responded by saying the Commission wanted to make sure they were not increasing the amount of continuing education for licensees. She referred to page 2, line 25 which defines the Commission core course and that the course must contain no more than four hours of classroom instruction. This helps the Commission stay within the allowable number of elective hours plus the two Commission core courses, so the requirement would not be more than 16 hours.

MOTION:

Senator Lakey moved that **S 1206** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry this bill on the floor of the Senate.

John Eaton, Idaho Association of Realtors (Association) and the Government Affairs Director, said the Association supports this legislation, that it was a collaborative effort and he appreciated all of the good work the Commission did. It has been very good for his Association to go through this process.

S 1269

Relating to Run-Off Insurers was presented by Woody Richards, Idaho Insurance Guaranty Association (Association). **Mr. Richards** said this legislation would provide an option to the Department of Insurance (DOI) to utilize the Association for claims handling services for run-off insurers who sell property and casualty insurance. This legislation also defines "run-off insurer".

Mr. Richards gave some background information about the Association and said it is made up of all of the authorized property and casualty insurers. The primary function of the Association is to investigate and pay claims in Idaho within certain statutory limits when a property or casualty insurance company becomes bankrupt. The money to pay for these claims comes from assessments of the Association members and from assets of the bankrupt insurance company. Payment of these claims is supervised by the DOI and the court. Any determination for bankruptcy of an insurer must be made by the DOI and a state district court. As an alternative to bankruptcy, the DOI may also decide to try to rehabilitate an insurance company or supervise the continuing business of the company. As part of those decisions, the DOI may decide that some form of run-off is appropriate. **Mr. Richards** explained that run-off means that a company may be told it cannot write any new insurance business, but that it should continue to pay claims.

Mr. Richards indicated the amendment on page 3 of **S 1269** seeks to address situations where the DOI decides that a run-off is appropriate. For example, sometimes when an insurance company is experiencing severe financial difficulties, its employees leave to seek employment elsewhere. In such a situation, the DOI may decide to authorize the run-off company to enter into a contract with the Association to continue to adjust and pay claims. This legislation would give the DOI the option to authorize use of the Association expertise and manpower to help when there is a run-off. Importantly, the amendment does not require that the Association be used. If the Association is sued, then its expenses would be reimbursed from insurance company funds. No funds of the Association would be used by the Association when acting as a third party administrator in a run-off. In addition, the Association and its employees and agents would be immune from liability just as they are when it handles insurance company liquidations.

In addition, **Mr. Richards** said, on page 3, lines 30 through 43, the term "run-off" is defined. Importantly, this language does not require the DOI to put an insurer in run-off mode. That is already addressed elsewhere by Idaho law. The legislation has been discussed with the DOI and there appears to be no opposition.

Senator Schmidt referred to page 3, line 36, where it says "has indicated that it will cease writing new insurance policies" and asked who would receive that communication. He asked **Mr. Richards** to explain the process. **Mr. Richards** explained that when the indicators are that a company is in financial trouble, the company comes in and talks to the DOI director. A plan could be worked out where the company could still continue to operate, or the DOI director may decide after talking with them that they need to liquidate. The company is probably going to make an offer during the course of those conversations to cease doing business if it is in serious financial difficulty, so it is not incurring greater problems or additional obligations. Instead, it is hoped, the company is paying claims while it gets the rest of its house in order.

MOTION:

Senator Martin moved that **S 1269** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engleking** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry this bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:45 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 20, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1244</u>	State Insurance Fund - Power to Sue and Be Sued	Senator Goedde
<u>S 1242</u>	Health Reimbursement Arrangements - VIBA	Senator Goedde & Former Senator Jim Hammond
<u>S 1282</u>	Relating to Legal Rate of Interest	Senator Goedde
<u>S 1273</u>	Relating to Worker's Compensation - Firefighters	Rob Shoplock, Professional Fire Fighters of Idaho

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 20, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all to the meeting.

S 1244 **Relating to the State Insurance Fund - Power to Sue and Be Sued** was presented by Senator Goedde. **Senator Goedde** said that in 1998, the Idaho Legislature made major changes in statutes dealing with the Idaho Insurance Fund (Fund). It came under the oversight of the Idaho Department of Insurance (DOI) and was directed to operate as an insurance company. The operation became hindered by statutes which originally created the Fund in 1917 and created conflicting requirements. This bill repeals most of the code passed in 1917 dealing with the Fund and allows it to operate as intended in the 1998 amendments.

MOTION: **Senator Martin** moved that **S 1244** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

TESTIMONY: **Don Lojek**, Attorney, representing a class of policy holders insured by the Fund. The policy holders filed a lawsuit against the Fund and are in the process of negotiating a settlement. **Mr. Lojek** said Idaho Code § 72-921 allows for reinsurance and Idaho Code § 72-914 speaks to setting up reserves adequate to meet losses and were of concern to him. The loss to the Fund will be in the neighborhood of \$50 million. He said he was unsure of what the bill does. He questioned whether the bill takes away the duty of the manager of the Fund and allows for reinsurance or "does it set up adequate reserves to meet losses." He commented there should be an opinion from the Attorney General's office whether this would impact the ability of the Fund to meet its present obligations. **Chairman Tippets** asked Mr. Lojek if he would identify certain sections that concerned him. **Mr. Lojek** said he was concerned about Idaho Code § 72-921 and Idaho Code § 72-914. He said Senator Goedde said this change would not affect any settlement in pending litigation. If it does not impact the lawsuit, then he would have no objection. **Senator Cameron** said Idaho Code § 72-921 was permissive language. He said that the manager "may" purchase reinsurance. He said the new statutes gave the authority under the rewrite. Idaho Code § 72-914 says that the manager shall keep an account of the monies paid in the premiums and he believes that is in current statute under the rewrite and the language was redundant to have it there.

Senator Goedde commented that every insurance company operating under the auspices of the DOI, looks at purchasing reinsurance and maintaining adequate reserves. The DOI has an audit staff that reviews those reserves for adequacy. He sits on the Board of the Fund and he is aware of the reinsurance they purchase and of the reserves they have set aside for future claims. **Chairman Tippets** asked if

the Fund supported this bill. **Senator Goedde** said the language was written by the legal staff at the Fund, it was reviewed by the board of the Fund and he believes there was official action to support this legislation.

The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

S 1242

Relating to Health Reimbursement Arrangements (HRA)-Voluntary Employees Beneficiary Association Plan (VEBA) was presented by Senator Goedde, who yielded to former Senator Jim Hammond. **Senator Hammond** said this was a bill he has been working on with the Department of Administration (DOA). He said that an HRA-VEBA provides the employer an opportunity to reduce premium costs, while providing the employee an opportunity to grow funds for un-reimbursed health care costs. The funds are deposited into an employee-managed trust. The funds are tax free going in and going out. This strategy, while reducing employer costs, provides the employee the opportunity to build a substantial fund for health care costs upon retirement. HRA-VEBAs have to adhere to Internal Revenue Service (IRS) standards and rules. Should the State institute this program, there is potential for substantial long-term savings due to lower premiums and better health care management. Start up costs would be less than \$5,000. Ongoing costs can vary. Currently, the costs per participant per month range from \$1.50 to \$7.50.

Chairman Tippetts said that on line 12, "the DOA may offer a health reimbursement arrangement as an approved benefit for all state employees or officers whose employer chooses to offer such a benefit to its employees or officers" and he was not comfortable that in all cases we know who the employer is for a Department of Health and Welfare employee or for a State Highway patrolman. He said he understood we were not saying the State of Idaho and all of its employees, but the intent was to allow some flexibility that subdivisions of state government could make that election. If that is correct, how do we know who we are talking about when we say "employer." **Senator Hammond** replied that technically, the State of Idaho is the employer for any institution or any department or division. In other states, the IRS has allowed divisions within the State, for example, the state patrol or the state police, to have a VEBA as a demonstration model before they move to larger groups. **Chairman Tippetts** asked if the effect of this legislation would be that for the State of Idaho, either everyone participates or no one participates. **Senator Hammond** said that was correct.

Senator Lakey asked if this is an all or nothing for the State and not varying by department. **Senator Hammond** said that was correct, according to the law, because everyone within the State of Idaho who is employed, whether it is directly or indirectly, are all state employees. **Senator Lakey** said he understood the all or nothing on the part of the State, but then the plan was not optional for the employees. **Senator Hammond** said that is the way the IRS allows this to work, and we are complying with what the IRS would require.

Chairman Tippetts said he understood that the employer has to choose whether to offer the health reimbursement arrangement, so the impact of this legislation would provide the option. There would still need to be some affirmative action on the part of the Legislature to say we are going to exercise this option. This legislation does not say we are moving to a VEBA, but it allows the option. He asked what would have to happen for the State to move forward with the VEBA. **Senator Hammond** said this legislation allows the DOA to decide whether they want to move forward. The DOA has an Insurance Committee (Committee) whose makeup is representative of many different segments of employees within the State of Idaho. That group would consider HSAs, HRAs, and other forms of health savings accounts. The Committee is already aware that the current model is probably not sustainable and they want to look at other models to see what

they can do to have a strong health care benefits program that is affordable and sustainable for the long-term. **Chairman Tippetts** referred to the language starting on the end of line 13, "All state employees or officers shall, for themselves and their eligible dependents, participate in a health reimbursement arrangement if the employer of such employees and officers chooses to offer the health reimbursement arrangement" and said it was apparent to him that this statute is not the trigger that implements the health reimbursement arrangement. He does not consider the DOA to be the employer of state employees. **Chairman Tippetts** said when he reads about the employer of State employees, whoever that is, the language says "there has to be further action taken" and he feels it has to be someone other than the DOA. **Senator Hammond** said the DOA serves under the Governor. **Chairman Tippetts** said he thought that would work as long as we are assuming and intending that the Governor makes that decision.

Senator Cameron said it was his understanding that the DOA acts as an agent for the State and its employees. The DOA is the entity designated to act as the employer and the State of Idaho is the employer. Someone has to act as the employer to sign contracts on behalf of the State of Idaho and the DOA acts in that capacity. The first question is whether or not the State offers a VEBA or offers a similar type of arrangement. The rewards are based on the employee's performance of stopping smoking or participating in the voluntary option. The idea is that by encouraging the employees to participate in healthy behaviors, it helps to lower the overall health care costs for the entire pool. He asked Senator Hammond to respond. **Senator Hammond** said there were several ways to fund a trust of an HRA-VEBA, which is just a health reimbursement arrangement. The employees own this trust because they all have their funds invested in this trust. One way to fund the trust is to readjust co-pays, deductibles, and coinsurance, to create a lower premium. The employee can leave the money in the account to grow, or the employees can reimburse themselves for IRS-approved medical expenses. Another way to fund the trust is for the employer to provide funds if employees attend different kinds of health wellness classes. If the employee changes their behavior by stopping smoking or diets to lower blood pressure or other health issues, then the employer will put funds in the account specifically for the individual employee and the funds can grow. Because the good behavior is being rewarded, the employees see their premium rates hold, rather than increase, which creates the long-term savings.

Senator Cameron said an HSA would require a separate type of insurance plan in order to qualify for the tax deductible nature. This program would not require any employee to participate or to pick a specific plan currently available under the state's offering, and would not violate grandfather status. **Senator Hammond** commented that was correct. HSAs have a limit on how much you can accumulate within the plan. HRAs have no limit and they can be used with the current plan. There is no limit as to how much can be accumulated over the life span of employment. The other value is the HRAs go in tax free; the investments grow tax free, they come out tax free. Even if an employee leaves, the funds still belong to the employee until they are used.

Chairman Tippetts stated "we are mandating that if the State exercises this option, that all state employees will for themselves and their eligible dependents participate in the HRA." The State may choose to contribute to an HRA for an employee, but an employee may have eligible dependents for which he or she chooses not to purchase insurance. Maybe they are insured elsewhere. They are eligible, but they are not covered by choice. He wanted to make sure that we really want to mandate that all employees and all eligible dependents are required to participate. Are there times when someone may choose not to have an VEBA? **Senator Hammond** replied that when talking about mandating that all employees participate, if an employee chooses not to insure their dependents or themselves because they choose to let their spouse's employer insure all of the family, that would make no difference relative to a VEBA program. It would not affect them one way or another because the employer is making the contribution, not the employee.

Senator Martin asked if testimony would be received from the DOA. **Senator Hammond** said the Director specified she would have liked to testify on behalf of the bill, but was unable to attend the meeting. **Chairman Tippetts** indicated there was someone present from the DOA to testify.

Senator Cameron said it was his understanding that under IRS rule, in order for the employer to receive the tax-qualified status, if the employer offers a VEBA, the employer must make it available to all employees and their dependents. He said to think of the VEBAs as accounts and this allows the DOA to establish an account. For example, if the employer says if the employee will go online and take a health evaluation assessment, the employer will put \$10 in the employee's account. He gave another example. If an employee joined a health club, the employer will put \$20 in the employee's account. The voluntary part comes from the action of the employee, but as a state we have to make it available to all eligible employees.

Chairman Tippetts said there is a difference between making a VEBA available to all dependents and requiring all dependents to participate. However, if there is no contribution from the employee, he said he did not know why we would not want all dependents to participate anyway.

Senator Hammond said the employee cannot contribute to the account and that only the employer can contribute. **Senator Lakey** stated the money the State would put into the account would be solely based on the employee choosing to participate in the incentives and there is no requirement that the employee put in any money into the account. **Senator Hammond** said that was correct.

Senator Schmidt asked if there was any research on VEBAs that he could examine. **Senator Hammond** said he could provide Senator Schmidt with some of the information and anecdotal evidence from local communities where VEBA programs have been effective.

TESTIMONY:

Keith Reynolds, representing the DOA, said that the Group Insurance Advisory Committee (Committee) has seen presentations on VEBAs. With the increases in the cost of group insurance the DOA welcomes every tool that may be available to address the increasing costs of group insurance. He stated the effect of this legislation would give the DOA a green light to study VEBAs. Because VEBAs require a trust which would require funding, they would be reviewed in the Joint Finance-Appropriations Committee (JFAC).

MOTION:

Senator Goedde moved that **S 1242** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor.

Relating to the Legal Rate of Interest was presented by Senator Goedde. **Senator Goedde** explained that in 1981, the Idaho Legislature set prejudgment interest at 12 percent. This rate is no longer reasonable, and the legislation would use the same formula currently in Idaho Code for post judgment interest as the rating mechanism for prejudgment interest. He said that a 12 percent interest rate in today's environment is unfair. Currently, fixed mortgage rates range from 4.1 to 4.5 percent and inflation is less than 1 percent. **Senator Goedde** said that he originally intended this legislation to address the prejudgment interest piece, but the majority leader decided we needed to expand the language. If this moves forward, he would suggest that it move to the Amending Order. The amendment we had agreement on was to change the 12 cents on line 10, to 7.5 cents and to get rid of the new language inserted at the bottom of the page. While looking at interest rates allowable in statute and 30-year fixed mortgages, the 7.5 percent would be more like 3.5 percent.

Chairman Tippets asked where the interest rates applied. **Senator Goedde** explained that on lines 1 through 6, the statutory fixed interest rate applies. He gave an example that if there is no interest rate expressed in a contract, and if he loaned \$1,000 to someone for a year and they paid it back, the balance due would be \$1,120. He said he thought 95 percent of the public has no idea that is on record.

Senator Cameron referred to line 10 of the bill relating to 12 cents. He wanted to know if the intention was to leave that amount in the bill. **Senator Goedde** said that if this bill is sent to the amending order, that is where 7.5 percent would be inserted. **Senator Cameron** referred to line 21 and questioned whether the 5 percent would stay in place. **Senator Goedde** said that was correct.

Chairman Tippets said that in a prior conversation, it was mentioned to him that this change could impact lawsuits. "Was this bill designed with any specific situation in mind?" **Senator Goedde** disclosed that he sits on the Board of the State Insurance Fund (Fund). He said he came before this body as an individual because he saw a problem and wanted the problem corrected. The Fund has taken no position on this bill.

Senator Cameron commented that this bill was not retroactive. Any case previously settled, or any contract previously let, or any entity where we would have been obligated to pay interest under this statute previous to the effective date of this statute of July 1, would still be garnered under the old 12 percent rate. **Senator Goedde** confirmed this statement. He also pointed out that this does not apply to post-judgment interest. Post-judgment interest is figured on a percentage of treasuries and that has not changed.

TESTIMONY:

Don Lojek said that as long as this bill is not retroactive, he didn't think it would affect the situation existing in the lawsuit where he represents 20,000 people in each of the senators' districts. He commented there was no fiscal impact outlined in the bill and he pointed out that the Department of Health and Welfare and the Department of Corrections each will receive \$1 million from the lawsuit. He said there will be a fiscal impact to the State the way the bill was drafted.

Phillip Gordon, Attorney, said he has been representing policyholders in litigation against the Fund, which was commenced in 2006. In 2009, there was a bill to repeal Idaho Code § 72-915, which was the statute under which the Fund was authorized to pay dividends. He protested the retroactivity aspect and explained that it violated the contracts clause of the Idaho Constitution. In the past, he has taken cases to the Idaho Supreme Court, and they were proven right by a unanimous court. He said it would make a lot better sense if the bill, when amended, would clarify that it would only apply prospectively. He said he thought that having a higher

rate of interest is an incentive for people to pay their bills. The higher interest is a disincentive to litigation, which, he said he thought was good due to overcrowded courts. He said he was not suggesting that 7.5 percent is a disincentive, but he questioned whether or not any disincentive was such a great idea.

Woody Richards, representing American Family, All State and Farm Bureau insurance companies said he was involved in a group who represented different interests, debtors, those who represented lenders, banks, creditors, the Idaho Trial Lawyers Association, as well as insurance companies. They were involved in studying the proposed bill, including the rate of interest and the retroactive piece. He said the legislation would not preclude the entering into a contract for a different contract interest rate. This is a default interest rate in the absence of a contract rate. There are other ways of encouraging settlement, which are already built into the law. He gave examples of the cost of litigation and bad faith claims. We do not want the interest to be at such a rate that it discourages the litigation of legitimate issues. Sometimes decisions on whether litigation continues is made on the basis of principal and not on the basis of an interest rate. The compromise the group arrived at was 7.5 percent. He encouraged the Senators to adopt the proposed amendments to the bill.

Michael Kane, representing the Property and Casualty Insurers Association of America, said he wanted to focus on the retroactivity and that the Idaho Supreme Court says that statutes passed in the middle of litigation do not affect substantive rights in litigation. There are no objections to adding another sentence in the Amending Order. The amount of interest has never been an issue in settlement, but rather the amount of money that is paid out is the focus.

Heather Cunningham, Attorney with Davison and Copple, said her practice focuses on private property rights, specifically condemnation work. She said she thought the statute has many hidden implications. She gave an example in condemnation cases, where the rate is set that a condemnor has to pay for taking private property. The rate applies from the date the complaint is filed to the date of the judgment. The rate does not apply to any amounts that the condemnor puts on deposit with the court. She referred to the letter she sent earlier. She said that when a property owner is able to ultimately obtain a judgment in excess of the amount deposited, essentially proving that the condemnor's offer fell short of the just compensation, our Constitution requires, a condemnor must pay interest on the difference between the deposit and the judgment at 12 percent, from the time the complaint is filed to the time of judgment. She gave another example of a condemnor who has an appraisal that just compensation is \$82,000 and chooses to deposit some additional monies in the amount of \$85,000. The case takes four years to resolve and a jury ultimately awards \$800,000 as just compensation. The condemnor pays interest at 12 percent on \$715,000, which is \$85,800 per year. Over four years this is \$343,200. That is the only compensation the owner receives for the delay, his lost opportunity for cost, the fact that his property has been encumbered by pending litigation, and the fact he has not received the benefit of the appreciation in the real estate market over those four years, since the value is fixed at the time of the complaint. The condemnor could have avoided the interest payment by making a higher deposit or resolving the case before judgment is entered, but when a condemnor does not make a fair assessment of just compensation and an owner has to go all the way through the process to prove that a higher amount is owing, the 12 percent interest rate is very reasonable. She said the 12 percent protects property owners.

Senator Schmidt said he was trying to understand the condemnation interest awards, because he thought that would fall under language in the beginning of the statute or under Subsection 2. **Ms. Cunningham** said the 12 percent interest rate has always been applied and been upheld by the Idaho Supreme Court.

MOTION:

Senator Cameron moved that **S 1282** be sent to the 14th Order for amendment. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor.

S 1273

Relating to Worker's Compensation-Firefighters was presented by Rob Shoplock, Executive Vice President of the Professional Firefighters of Idaho. **Mr. Shoplock** said he was there representing 1,100 firefighters from the State of Idaho. He gave a brief history of the bill. **Senator Cameron** asked if the last time the bill was brought forward was in 2013. **Mr. Shoplock** replied "no."

Senator Lakey said this has been building over three years with stakeholders getting together, and asked how the volunteer firefighters had been involved in the discussion. **Mr. Shoplock** said he had been involved over the past five years and started conversations with the volunteer firefighters from the beginning. He said he was unaware they opposed this bill. He said last year he spent a week in Washington, D.C. with the president and a board member of their association, and when he left they said they did not have the funding source for physicals and they wanted to be left out. He said he believed there were some other reasons for the sudden change, but he would like to see the volunteers included in this legislation.

Senator Goedde asked the Industrial Commission (Commission) for some history on worker's compensation claims. He stated that in the last 20 years, there were six claims in this arena and there were three deemed non-compensable. One was settled prior to the hearing, one was dismissed, and one was deceased. Of those six claims, if this statute had been in place, would any of them had been awarded benefits? **Mr. Shoplock** said there was only one, to the best of his knowledge. **Senator Goedde** said two of the claims were shown to be due to cancer.

Senator Cameron asked Mr. Shoplock to discuss the fiscal impact of the bill. **Mr. Shoplock** said the National Council on Compensation Insurance (NCCI) estimates that "The impact on Idaho's worker's compensation system costs is expected to be negligible since the occupational class directly targeted by this proposal, professional firefighters, represents a relatively small portion of Idaho's total system benefits." Their original analysis estimated an increase of 2.3 percent to 7.8 percent in worker's compensation premiums for employers of firefighters. Of the budgets affected, the average impact on overall department budgets would be approximately 0.1 percent to 0.44 percent. Based on this original NCCI estimate, the effect of this bill would be approximately \$48,500 to \$165,000 total on government entities spread over all the cities and fire districts in the state. There is no impact to the General Fund. **Mr. Shoplock** said in 2007 the State of New Mexico had passed this kind of legislation, but there was no increase in worker's compensation premiums. His department has a \$5 million budget and there would be a \$5,000 increase in their worker's compensation premium. **Senator Cameron** mentioned the impact would be felt by cities and not by the State and that is why there is no impact to the General Fund listed. **Mr. Shoplock** said that was correct.

Senator Goedde said that if this legislation moves forward, the worker's compensation carrier will have to prove that if one of the firefighters comes down with one of these diseases, that there is something in his private life that was the cause. Otherwise, it will be presumed to be compensable under worker's compensation. There is a cost of investigation and defense. That cost is not included in the specific rates for the firefighters, so that would be spread across

the entire population of the policyholders of the Fund. It may not be much, but it is an undisclosed cost.

TESTIMONY:

Travis Woolford, testified that he has been a career firefighter with the Boise Fire Department for almost 21 years. He has been married for 27 years and has six children. He said it has been hard to come to terms with the possibility that his career choice may have caused his cancer and may affect the livelihood of his family. He said his cancer was quite a surprise when he was diagnosed in 2007. He had an upper endoscopy done and on December 10, 2007, he was told by his doctors he had a fast moving esophageal cancer. The financial impact of his treatment wiped out their savings and they had to take out a second mortgage on their home. He said that he has had no other option than to try to keep on going until he is able to collect Public Employees Retirement System of Idaho (PERSI) funds. The other means to meet the livelihood of his family would be by death if cancer visited him again. If he had the option of worker's compensation, it would be a lot easier. He said in the future, more professional firefighters will be diagnosed with debilitating diseases such as cancer. He thanked the Committee for their consideration and time.

Richard Owen, Attorney from Nampa, said he has represented injured claimants since 1980 and he hoped to offer some wisdom to the Committee to illustrate exactly what a presumption is, and how it would affect a worker's obligation under the worker's compensation law. A presumption only changes when a plaintiff is required to prove his case. He explained an occupational disease case. He said if the case was not listed in Idaho Code § 72-438, one had to prove five basic things: 1) prove exposure to the risk at work; 2) prove the risk of injury was peculiar to your trade, employment or occupation; 3) prove that you were exposed to the risk for at least 60 days; 4) prove that after the disease became known to you, that you gave notice to your employer within 60 days; 5) prove that what you did at work actually caused your injury. If your occupational disease is listed in the existing Idaho Code § 72-438, you don't have to prove all five elements. You get a pass on the first two. Presumptions are not hard to rebut and there are other presumptions that change the burden of proof between the parties. If an employee gets pain medication and becomes addicted to the medication, chances are very slim that addiction treatment will be compensated under worker's compensation. Presumptions in this bill only talk about specific diseases that firefighters have that are backed up by science.

Senator Cameron questioned Subsection 3, line 48, page 2, the presumption says the language created in this Subsection may be rebutted by medical evidence showing the firefighter's disease was not proximately caused by his or her duties of employment, which he understood. However, he said the next sentence says if the presumption is rebutted by medical evidence, then the firefighter or the beneficiaries must prove that the firefighter's disease was caused by his or her duties of employment. He said that if the first sentence was true, how can the second sentence apply. **Mr. Owen** said that this presumption does address causation. The presumption regarding causation can be done away with completely by a doctor's letter that says this person's cancer is not caused by work. In that case, the firefighter starts over, and this sentence allows the firefighter to proceed by showing his cancer was indeed caused by his work. **Senator Cameron** stated that if the worker's compensation company provided a letter from a doctor stating the cancer was caused by something else, that would be rebutted. "How can the beneficiaries or the firefighter be able to provide evidence to the contrary? Does the second sentence trump the first sentence?" **Mr. Owen** said he thought the second sentence simply allows the fireman to go forward and say to the Commission judges that his medical evidence is better and he wants the Commission to believe his evidence. That is the flat ground of causation and there is no presumption in play. It allows the firefighter to proceed with his case without the benefit of the presumption.

Senator Cameron said that neither side would have a leg up on the other side and **Mr. Owen** said that was correct. **Senator Cameron** questioned line 9 on page 3 where it said the presumption shall not apply to any specific disease diagnosed more than ten years following the last date on which the firefighter actually worked. As he looks over the schedule, there are several diseases listed after 10 years. **Mr. Owen** said the language in Subsection (e) is more in the fashion of the statute of limitations. This presumption will not help a firefighter if they try to bring it more than ten years after they leave the department. **Senator Cameron** asked if he left the department ten years ago and after 12 years he finds out that he has kidney cancer, is he out of luck? **Mr. Owen** said the presumption would not help.

Senator Goedde indicated he had to leave the meeting and he wanted the action on this bill postponed until the next meeting. **Chairman Tippetts** said the action would be postponed.

Doctor Rob Hilvers said he was a family physician with a sports medicine background and a full-time Emergency Room doctor at St. Luke's. In 2004 he was asked to take care of the Boise Fire Special Operations Team. Currently, he takes care of approximately 80 percent of southern Idaho firefighters doing annual comprehensive and entry level examinations. The research is compelling. Due to his background, he looks at firefighters differently. He thinks the risks are real. He summarized by saying building products are better, but the combustion of the products is more toxic, so firefighters get higher levels of chemical exposure when fighting fires. The protective wear is inadequate and the dermal exposures are significant, with the smell lingering on their bodies for as long as three days. This lines up with the data showing multiple myeloma and non-Hodgkins lymphoma, certain types of prostate, colon, and gastrointestinal cancers. He said "if you ask firefighters to be firefighters, is it their responsibility to take the increased risk of cancers?"

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:05 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 25, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1316</u>	Approval of Minutes of February 4, 2014 Relating to Veterans' Preference Points	Senator Goedde Pam Eaton, Idaho Retailers' Association
<u>S 1310</u>	Relating to Home Owner's Association Fees	Senator Rice
<u>S 1311</u>	Relating to the Public Works Construction Management Licensing Act	Wayne Hammon, Executive Director, ID Association of General Contractors
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Kenneth Edmunds of Twin Falls, Idaho, as the Director of the Department of Labor, to serve a term commencing November 25, 2013, and serving at the pleasure of the Governor.	Kenneth Edmunds
<u>S 1355</u>	Relating To Medical Care	Ken McClure, Idaho Medical Association

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 25, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all. He said he was going to put the Gubernatorial Appointment of Kenneth Edmunds first on the agenda in order to accommodate his testimony on the House side.

APPROVAL OF MINUTES: **Senator Martin** moved to approve the Minutes of February 11, 2014. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

APPROVAL OF MINUTES: **Senator Goedde** moved to approve the Minutes of February 4, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: The appointment of Kenneth Edmunds of Twin Falls, Idaho, to Director of the Department of Labor (DOL), to serve a term commencing November 25, 2013 and serving at the pleasure of the Governor. **Kenneth Edmunds** thanked the Committee and said it was a privilege to be appointed to this position. He introduced his wife, Jane, and said she was his greatest support. He has spent the last several years working with issues on education at the state level. He applied for this position because he thought it would be a chance to work towards development in way that was not possible through education. His overall goal is to build a stronger workforce and economy for Idaho and he said he thought the DOL played a key role.

Vice Chairman Patrick commented that Mr. Edmunds has done a great job in the Magic Valley working with the Department of Commerce (DOC), the DOL, the community college and the local urban renewal district. **Mr. Edmunds** said he thought the Magic Valley was setting the tone for how economic development should occur and how it can benefit the State.

Senator Goedde commented that he has seen a willingness for the DOL, the DOC and the Department of Education (DOE) to work cooperatively together. They all have a role in business development and education is a key part. He looks forward to seeing the cooperative effort.

Senator Martin said he felt a responsibility to mention Mr. Edmunds predecessor, who did an excellent job, and he was looking forward to Mr. Edmunds' tenure. **Mr. Edmunds** stated that Director Madsen was a unique individual who was people-oriented, and it is going to be very difficult to fill his shoes.

MOTION: **Vice Chairman Patrick** moved to send the gubernatorial appointment of Kenneth Edmunds, Director, Department of Labor, to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor of the Senate.

S 1316 **Relating to Veterans' Preference Points** was presented by Pam Eaton, Idaho Retailer's Association (Association). **Pam Eaton** said this legislation clarifies that private employers may give preference to the hiring and promoting of veterans. She gave a brief overview of what veterans are facing today. She said the United States is presently emerging from a decade of war, resulting in a draw down of combat-ready forces nearing 1 million service members by 2017. Deeper defense spending cuts compound the challenges our veterans will face in the coming years as they readjust to civilian life. Veterans face 20 percent higher unemployment rates than the rest of the population. There are many industries and businesses across Idaho and the nation that are making huge efforts to help our veterans, particularly retailers. **Ms. Eaton** summarized the bill. She said Idaho law already allows for private employers to hire and promote at will, but these laws are being challenged. Her Association wants to give additional assurances that businesses won't end up in court. Idaho Code § 65-503 relating to the rights and privileges of veterans, line 12, says the eligibility for preference includes veterans and disabled veterans, a widow or widower of a veteran as long as they remain unmarried, and the spouse of a service-connected disabled veteran if the veteran cannot qualify for any public employment because of that disability. Public employers already have these specific protections and her Association supports the same protections for veterans.

Chairman Tippetts said federal law prohibits discrimination. He wanted to know if there was any conflict with federal law if **S 1316** was passed. **Ms. Eaton** responded that there is already protection, but her Association was trying to stay out of court. The attorneys for the Association said that **S 1316** did not conflict with the federal law. She indicated that the same protection and language has passed in other states and there was no conflict.

MOTION: **Senator Cameron** moved that **S 1316** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry the bill on the floor of the Senate.

APPROVAL OF MINUTES: **Senator Guthrie** moved to approve the Minutes of February 6, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

S 1310 **Relating to Home Owner's Association Fees** was presented by Senator Rice. **Senator Rice** said this bill originated from his constituents. He said that currently home owners associations (HOA) enforce covenants and restrictions in subdivisions by fining individual homeowners for violations of covenants and restrictions. Frequently, these fines are levied despite homeowner attempts to comply with the covenants, and without any process other than a letter informing the homeowner that they will be fined. He gave an example of a homeowner who was notified that her lawn was too yellow. She sought help from Zamzow's and followed their directions. The HOA fined her because the lawn did not turn green quickly enough. She wrote a letter to the HOA and attached the receipt. The HOA ignored her letter and sent out another fine.

Senator Rice explained there is a pattern of some HOAs fining homeowners arbitrarily. The fines are then enforced through liens on the homeowner's real property. This bill puts reasonable requirements in place that protect the homeowner from arbitrary and capricious actions by the HOA and provides a set of standards that courts can use if there is a dispute regarding the validity of the

fine in a subsequent lien foreclosure action. **Senator Rice** said that when a bank takes over a property and prepares it for sale, an HOA will run up a daily fine prior to completion of work to correct the violation. In order to sell the property, the bank pays the fine even though the fine is unjust.

He said this bill sets a balance so that an HOA cannot arbitrarily fine a homeowner. No fine may be imposed for a violation of the covenants, conditions and restrictions (CC&R)s according to the rules or regulations of the HOA unless the authority to impose a fine is clearly set forth in the CC&Rs. A majority vote by the board of the HOA will be required prior to imposing any fine on a member for a violation of any CC&Rs and written notice by personal service or certified mail of the meeting during which the vote will be taken will be made to the member at least 30 days prior to the meeting. In the event the member begins resolving the violation prior to the meeting, no fine will be imposed so long as the member continues to address the violation in good faith until fully resolved. No portion of any fine may be used to increase the remuneration of any board member or agent of the board.

Senator Guthrie stated that if the HOA met once a month and they just had their meeting, they would have almost two months before they could meet on the issue. **Senator Rice** said the HOA board could have an additional meeting if they so chose. **Senator Cameron** asked what the reason was for 30 days instead of 15. **Senator Rice** explained they were choosing a time to allow someone to work on a repair. In addition, it also allows for absentee owners to make the necessary corrections. He said the Board of Realtors felt this was a fair allowance.

Senator Schmidt questioned line 34 where reference is made to written notice by personal service or certified mail and said he thought 30 days was more than necessary. **Senator Rice** indicated that one of the problems they encountered was when there was a local representative for a bank, the notice of the meeting was sent out-of-state or to a national office. This is a trick used to maximize fines by some HOAs. He said certified mail was appropriate and multiple delivery attempts are standard in making sure owners get the actual notice. **Senator Schmidt** pointed out that if certified mail cannot be delivered, then the HOA could not take action. **Senator Rice** said that was a slight possibility, but the reality is that it is possible to find out the actual location where someone receives their mail.

Chairman Tippetts asked about parking violations in specific designated areas. He gave an example of when he parked in a marked parking place overnight without a permit and he received a fine. The problem was resolved the next morning when he moved the vehicle. He wanted to know if a fine could be imposed when he parked inappropriately. **Senator Rice** said that a fine could not be imposed under this statute. The HOA would have to seek other legal means. Homeowners need to have the opportunity to correct violations. There are some things an HOA has fined for in the past, and now cannot. This bill will protect homeowners' property rights and give them due process that was totally non-existent. **Chairman Tippetts** asked what the options would be to enforce parking in specific designated areas. **Senator Rice** said parking space rules would have to not be a part of owning the lot by the homeowner. The restriction could then be put on the space. Another way, would be the ordinary court process of enforcing covenants. Finding a good middle ground is the purpose of this legislation.

Senator Guthrie referred to Section 1, line 27, that no fine may be imposed for a violation. He said that a fine may be imposed as long as the authority is clearly set forth in the covenants. That is saying the HOA has the right in the CC&Rs to lay out the ground work for levying a fine. He said it looks like the HOA board has full latitude to set that in their CC&Rs and the fine could say anything as far as time frames. He questioned whether there should be a sub-bullet saying all CC&Rs passed by the HOA must be sensitive to the following limitations.

Senator Rice said that what the bill does is provide that the rule has to be in the CC&Rs. Then, it provides a framework that will allow a court to look and say if the covenant is enforceable or not based on the process used and the circumstances. There are some equitable principles that can cause some uneven enforcement. There are courts that have disparate treatment, depending on the judge. This legislation provides, as a specific statutory process, that these are the standards that have to be met in order to be enforceable in a court. A lien could not be foreclosed upon unless it met these standards. **Senator Guthrie** said he assumed that nothing is grandfathered if this were to pass so that all of the HOAs would have to be sensitive to this. **Senator Rice** replied that was correct and that this legislation provides some boundaries.

Senator Cameron referred to 2(c), line 37 "in the event a member begins resolving" and asked Senator Rice to define that phrase. **Senator Rice** said the violation could be for a number of reasons. He gave an example of dandelions in a lawn. The lawn is sprayed for dandelions, but all are not killed with the first application of spray. A homeowner has begun to remedy the condition. Another example would be when there is a fence that does not meet the requirements. If the homeowner has begun, but not finished, this provides that the homeowner still has to continue to work on fixing the problem until it is actually completed. A homeowner cannot say that they pulled one post and now they can't be fined. The homeowner cannot say they will have to have another notice and then they will pull another post. The homeowner has to actually follow through. **Senator Cameron** asked who gets to define whether the homeowner has begun resolving the situation. Is it the HOA or is it the homeowner? **Senator Rice** said the homeowner will have to show and tell the board what they have done to begin and what they are doing. The board would have to make a determination. If there was a fine imposed, it could end up in court and the court would have a standard that they routinely use to determine who is right.

TESTIMONY:

Georgia Mackley testified in opposition to this bill. She said she was a co-owner of Development Services. She said they manage over 70 associations in the Treasure Valley. A majority of the associations already have a procedure in place for dealing with CC&R violations. The HOAs cannot fine homeowners for violations if the violation is not listed in the CC&Rs. She also said the procedure in place includes sending multiple letters to an owner as well as a final certified letter for attending a hearing or a chance to be heard in front of the board before being fined or having action taken for a CC&R violation. Most people move into neighborhoods and are grateful for the protection the CC&Rs afford the owners so that property values do not decline. She said that by allowing this bill to pass, HOAs will no longer be able to put in place a timely process for dealing with violations. This allows homeowners leeway in having to deal with their CC&R violation.

Senator Schmidt asked where HOAs are defined in statute. **Ms. Mackley** said condominiums are defined, but HOAs are not. **Senator Cameron** commented the definition was located in Idaho Code § 45-810.

John Eaton, Idaho Association of Realtors (Association), said he worked with Senator Rice on this issue. He has had a number of issues with bank-owned

property is where fines have been levied up to \$100 per day. Liens are placed on properties that amount to several thousand dollars knowing that the banks have to pay those liens in order to actually transmit the property and get it back on the market. He said this legislation was a common sense solution. He asked for support of this bill.

Senator Schmidt commented that the Association has a concern with liens filed, yet the statute the Committee is considering has to do with the actual functioning of a HOA. **Mr. Eaton** said the actual problem is that there is no oversight on how these fines are placed on the property. Once those fines accumulate, the only mechanism they have to recover those fines is to file a lien. Their concern is how the fines accumulate and the fact that if someone is trying to rectify the problem, they are still accumulating those fines. In their own industry, they have fines that are levied against real estate agents by the Real Estate Commission (Commission). They passed a bill several years ago that says none of that fine money can go for the operation of the Commission. The money has to go for the education of the licensees. The purpose of the bill was to take away the incentive to fine and to build up their operations. **Mr. Eaton** indicated that in the bill, that no portion of any fine may be used to increase the remuneration of any board member or agent of the board.

MOTION:

Senator Martin moved that **S 1310** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Martin commented that most of us live in a neighborhood that has an HOA because we want to keep our neighborhoods pristine and as well-kept as possible. He said that in his dealings over the past 20 years with HOAs, he found them to be very aggressive with regards to their fees and their treatment of situations that could have been resolved easily. He said this bill is a modest effort to reign in and correct a problem he saw for 20 years. **Senator Lakey** said that HOAs do protect property values, but it is a contract, and it is unusual for one party to be able to unilaterally tell the other party that they are in violation of the agreement and then issue a fine every time there is a violation. He is in support of the bill.

The motion carried by **voice vote**. Senator Rice will carry this bill on the floor of the Senate.

S 1311

Relating to Public Works Construction Management Act was presented by Wayne Hammon, Executive Director of the Idaho Association of General Contractors (AGC). **Mr. Hammon** said this bill updates Idaho Code to allow for Construction Manager/General Contractor contracts on publicly funded building projects. It does so while maintaining the safeguards and integrity of the public works contracting process.

S 1311 allows for an alternative contracting process on public works projects known as Construction Manager/General Contractor (CM/GC). **Mr. Hammon** said while this may be new to Idaho public works contracts, it is not a new concept. This method is already employed on a daily basis in Idaho in privately funded construction. In addition, CM/GC is a common process for public work projects in many other states including Utah, Nevada, Washington, and Wyoming. In many cases the public entity which owns the project lacks the professional staff to carry out large or complex construction projects. To address this, the Idaho Code was amended in 1998 to allow public entities to hire a construction manager (CM) to provide professional expertise during both the pre-construction and construction phases of a project. When these changes were implemented, the CM process was new and a decision was made to limit

the amount of construction work in which the CM could participate. At that time, this was a reasonable accommodation. Since then, the construction industry has evolved and the CM position has matured and moved beyond the limitations still imposed by our now outdated 1998 statute. The bill keeps the current CM system in place and updates the term to "CM Agent." It also adds a second delivery alternative called CM/GC.

Mr. Hammon indicated that throughout the bill the term "CM" has been replaced with the term "CM Agent" to distinguish this process from the CM/GC process. However, since the bill was printed, some stakeholders have said that they prefer the term "CM Representative." To address these concerns, an amendment has been prepared that replaces "CM Agent" with "CM Representative" should the Committee choose to send the bill to the Amending Order. All of the rules and safeguards that are in effect today for a CM remain in effect for a CM Representative under this bill. CM/GC arrangements allow for the public entity to free itself of much of the risk associated with the construction process. This risk is shifted to the contractor, who instead of just managing the process, is now a true partner with the public owner through the entire development, design and construction phases of the project. Typically, under this type of arrangement, the contractor is bound to a guaranteed maximum price for the total project, assumes the responsibility to control the construction costs, and takes the risk of cost and schedule overruns. While a CM Representative is working with someone else's money, a CM/GC is directly and financially tied to the success of the project. Because the CM/GC is engaged in every part of the project and is allowed to perform some of the construction themselves, they are better able to manage costs and ensure a timely delivery of the project.

Mr. Hammon pointed out that the CM/GC provisions are on page two of the bill. During the pre-construction phase of the project, the CM/GC and CM Representative fulfill the same types of duties and are bound by the same rules. The difference is that the CM/GC is also a licensed public works contractor and may perform some of the actual work once the project reaches the construction phase. Both the CM Representative and the CM/GC are selected and compensated in the same manner and in accordance with public work contracting provisions already laid out elsewhere in Idaho Code. Under either model, the design and engineering must be done in accordance with Idaho Code by licensed professionals. Likewise, both are required to comply with the State's bonding requirements. While the pre-construction process is similar, the differences begin when the project reaches the construction phase. At the bottom of page two, the bill requires the CM/GC to go through an open and competitive bidding process for all construction work, materials and equipment. This extra step is meant to ensure that the project's owner and the taxpayer footing the bill are protected and ensured the best possible price for the work.

Mr. Hammon stressed that while CM/GC may be new for Idaho public works, it is not a new concept. He pointed out that this very room and all of the tenant improvements and interior finishes of the Capitol renovation and expansion were built through a CM/GC contract. Likewise, most of the privately-funded buildings going up all over our state are being built through CM/GC contracts. In addition, **Mr. Hammon** wanted to assure the Committee that the Associated General Contractors (AGC) has reviewed this legislation with multiple stakeholders, including the Division of Public Works, the associations representing Idaho's cities, counties and school boards, and a wide range of individual taxing districts across the State. All have been supportive of these changes and many look forward to exploring the possible savings associated with the CM/GC contracts. **Mr. Hammon** said he believes that this is truly a win-win situation for the contractor, the project's owner, and the taxpayers.

Mr. Hammon said it was brought to the attention of the AGC that some stakeholders prefer the term "CM Representative." The amendment substitutes this wording for the term "CM Agent" in each of the nine locations it appears in the bill. In addition, the amendment removes an unnecessary cross reference and adds language that clarifies that none of these changes are to impact highway construction. Idaho Transportation Department (ITD) already has this authority in Idaho Code § 40-905, and the AGC wants to make sure not to impede its work.

Senator Martin wanted to know why this protection is needed since it is considered best practice now. **Mr. Hammon** replied that the contractor should be involved in a project as soon as possible so they can integrate the entire project, which saves time and money. He said most of the construction that is done in privately-funded buildings in Idaho has been done this way.

TESTIMONY:

Cindy Ozaki, Idaho Falls Auditorium District (District), testified in support of the bill. She indicated her District was funded by the 5 percent tax on hotel rooms in the community. She said her District wants to build an auditorium by using the CM/GC process. She said this process would give them the best design, and that savings could be significant.

Kevin DeKold, CRSA, an architectural firm (CRSA is an acronym for founding principles of the company - Cooper, Roberts, Scott, Architects) from Idaho Falls, testified in support of this bill. He said his company has been using the CM/GC method, which has proven to be very effective and saves money for private industry. He urged the Committee to look at this method in the public industry as well.

Aaron Johnson, Bateman-Hall Construction, testified in support of this bill and said he has participated in the CM/GC method. He indicated that the method works well in private industry and the public sector would be well-served if this method were adopted. He said that when the contractor is not involved in the design phase, that is when change orders begin.

There are two main delivery methods in the public sector. One is a hard bid from a general contractor. The limitation is the general contractor does not participate in the design phase of the building, which puts the risk squarely on the public entity that is contracting that work. The general contractor's interest will align with the architect's and the owner's interests because right after the bid is done, change orders begin as plan deviations occur. A general contractor looks to increase their revenue and there is not a collaboration effort. The other method is the CM Agent or CM Representative, which is the preferred method to protect the public entity. The limitation of that is the CM Agent does not have any power or any authority to make any changes to sub-contractors, because they are directly contracted with the public entity. The CM is the advisor only and cannot participate in the construction nor take any of the risk, which puts the public entity at risk for construction claims, defects or sub-standard work.

Senator Goedde asked Mr. Johnson if he was able to quantify the savings on this type of a project. **Mr. Johnson** said that during the design phase it is important to have the general contractor involved, because it puts the public entity first and foremost and there is a partnership from the beginning. The contractor has the expertise to select the best materials for pricing and the best procedure for construction in order to be cost effective. He was unable to assign an exact savings amount and it varied.

Senator Schmidt stated he thought risk was being shifted and asked if a bond coverage increase was needed. **Mr. Johnson** said by using this method, the risk was usually eliminated in the design phase, which eliminates change orders. Change orders are where the increased expense occurs and could be disastrous to a project when the bond money runs out and the project may not be completed. By having a CM/GC the risk is placed on the general contractor to make sure the project comes in at the number guaranteed. He said whether it is a CM Agent or a CM/GC, his company still takes a reputation risk, which is worth more than the monetary risk.

MOTION:

Senator Lakey moved that **S 1311** be sent to the 14th order for amendment. The motion was seconded by **Senator Martin**. The motion carried by **voice vote**. Senator Lakey will carry this bill on the floor of the Senate.

S 1355

Relating to Medical Care was presented by Ken McClure, Idaho Medical Association. **Ken McClure** said this was a housekeeping bill designed to deal with the effect of quality reporting standards imposed by the federal government and insurers on the standard of care expected of physicians.

In Idaho, a physician is liable if he or she injures a patient by doing something a reasonable physician in the community with similar training and experience would not have done under the circumstances (or does not do something that a reasonable physician would have done). This is called the "community standard of care" and has been the law in Idaho for a very long time. The resources and experience in each community are different.

He pointed out the way physicians are being reimbursed is changing from a fee for service model, or a "piece rate", to a system that gives an incentive for quality outcomes. The Affordable Care Act (ACA) and other federal laws have adopted payment incentives for physicians to do things that the Centers for Medicare and Medicaid Services (CMS) believes lead to quality outcomes and allows physicians to report the outcomes to the CMS. The ACA also requires insurers who provide insurance on the state and federal exchanges to adopt their own metrics of quality. This means that physicians will be getting scored on quality metrics that may or may not be related to the quality of care they are expected to provide in their community. **Mr. McClure** said that because each insurer is to adopt their own metrics, a physician will be held to multiple and probably inconsistent standards. These standards are to be created in Baltimore, Nashville, Houston and Los Angeles and not in Saint Maries, Burley or Salmon. These metrics are not meant to create a standard of care, but are meant to encourage quality, and they are voluntary for each physician.

Mr. McClure noted that these are reimbursement requirements only. The only consequence under federal law is that a physician will not be fully reimbursed. Currently, there is a 0.5 percent bonus. In two years, there will be a 2 percent penalty for not following the ACA guidelines.

This legislation allows these metrics to be used for reimbursement purposes, but affirms current law that the standard of care is established in Idaho communities.

Subsection 2 of the bill affirms that these reimbursement metrics are relevant for reimbursement purposes, but are not relevant to a malpractice claim since they are not established by anyone familiar with the community standard of care in an Idaho community. **Mr. McClure** went on to say this legislation is also fair and even-handed. He said this is not a change in current law, just an assurance that these metrics will not be used to change existing Idaho law.

TESTIMONY:

Patrick Mahoney, Idaho Trial Lawyers Association (Association), proposed an amendment to the bill. He said that a statute should be drafted as narrowly as possible to serve its intended purpose. The purpose of this bill is to deal with a concern that the ACA sets forth third party payor metrics. It sets forth certain guidelines that practitioners have to follow for reimbursement purposes, particularly Medicare and Medicaid reimbursement purposes. He said there was a concern on the part of the Association that there was additional language that would provide fodder for ambiguity. It is unnecessary, and will have some unintended consequences during a lawsuit. He referred to lines 16 through 18 and lines 31 through 33 of the bill. The effect of the verbiage is to establish the local standard of care. Reference cannot be made only to a third party payor guidelines and metrics. Reference cannot be made to regulation, metric or guideline of the United States. The solution is that if the purpose is to limit the language to a third party payor, then put a period after Public Law 11-148, which is the ACA language. That says the local standard of care is not going to be established by referring to payment metrics in the ACA. Another alternative could be to put a comma after the Public Law 11-148. Strike the language all the way up to the next line (or by a third party payor). This will protect local physicians against having a national third party metric used as the standard of care. He urged the Committee to send this bill to the Amending Order.

Senator Lakey said he does not do plaintiff work, but asked if the federal regulation applied to the community standard of care or was it beyond the standard of care that Mr. Mahoney was trying to apply. **Mr. Mahoney** said the way that issue is dealt with in medical malpractice litigation is in presenting expert witness testimony, a physician would describe whether or not following that particular standard or metric or regulation is part of the local standard.

Don Lojek, Attorney, said the bill was overbroad and applied to all people in the medical field. He said he agrees with removal of the language in line 16. He said the bill has created a conflict with all medical professions. In medicine, as a condition of participation in Medicare or Medicaid, health care areas have to abide by federal standards. Idaho is one of two states in the country that have a local standard of care. Anyone seeking to prosecute a medical malpractice case has to show the local standard of care. He said if the language was struck in lines 16 through 18 and in lines 31 through 33, that would align with the Statement of Purpose. He urged that the law be amended.

Mr. McClure pointed to lines 12 and 13 and said that if there is an obligation to follow a federal statute, this legislation does not change the obligation. He then referred to lines 27 through 29 and said he wanted to make clear that if the standard of care in a community coincides with one of the metrics, that fact can be considered. The only thing that is not reported is if there was a 2 percent penalty of non-compliance with a voluntary requirement. He said this bill does not only apply to doctors but to others. He urged the Committee to pass the bill without amendment.

Chairman Tippetts said he understands the argument that was made about potential concerns by leaving in the language "by any other law or regulation of the United States or any entity or agency thereof". He said he didn't understand Mr. McClure's explanation referring to the standard of care under this chapter or any other Idaho statute, and asked how this ameliorates the concern that was expressed. **Mr. McClure** explained that if the federal law has a regulation and it is not followed, that is not a determination whether it is a standard of care met under this statute or any other Idaho statute. It is a standard of care set by the federal government. This legislation does not immunize someone from the regulation.

Senator Lakey wanted to know if the intent was that "any federal or other state regulation that applies to reimbursement", be applied in a liability determination. "Are there things beyond that scope that this legislation covers?" **Mr. McClure** said all of the metrics he now knows of are reimbursement metrics. Over time those may find their way into the standard of care as we learn more about evidence-based medicine and how to get better outcomes. Until they do, it is not appropriate for them to be thrust upon physicians who don't yet practice that way in their community. Those are the metrics we are concerned about.

Chairman Tippetts asked Mr. McClure to respond to the language on line 16 "by any other law or regulation of the United States or any entity or agency thereof or by another state" and why he would oppose that amendment. **Mr. McClure** said that there are a number of metrics that are now being proposed by CMS. Some metrics are being proposed under the ACA, some are under the Medicare Act and other federal statutes. The ACA is what caused the metrics to multiply.

MOTION:

Senator Schmidt moved that **S 1355** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 3:00 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 27, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1273</u>	Relating to Worker's Compensation for Firefighters	Rob Shoplock, Professional Fire Fighters of Idaho
<u>S 1314</u>	Relating to Payday Loans	Senator Heider

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 27, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MEETING CANCELLED

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 04, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1273</u>	Relating to Worker's Compensation for Firefighters	Rob Shoplock, Professional Firefighters of Idaho
<u>S 1314</u>	Relating to Payday Loans	Senator Heider
<u>S 1359</u>	Relating to Exemption from Coverage from Worker's Compensation Law	Senator Johnson & Senator Hill

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 04, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippetts

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m. He welcomed all.

S 1273 **Continuation of Relating to Worker's Compensation for Firefighters** continued from the meeting of February 20, 2014, was presented by Rob Shoplock, Executive Vice President of the Professional Fire Fighters of Idaho. **Mr. Shoplock** gave a brief overview of the bill, which he called the "firefighter's cancer bill". He said this bill addresses the nearly impossible burden of proving occupational diseases associated with firefighting within the worker's compensation system. He said that in the process of drafting this bill, some language was reworked. He said that he met with Representatives and Senators and received input from all stakeholders. After meeting with Senator Bair, it was decided that another Office of Performance Evaluation (OPE) study was not necessary. **Mr. Shoplock** said that physicals cost approximately \$750. Studies have shown that exposure to smoke does cause cancer in firefighters. **Mr. Shoplock** asked for support from the Committee for this bill.

Senator Cameron said he was supportive in general of the bill. He mentioned that many legislators represent volunteer fire departments in their districts and wondered why volunteer firefighters couldn't be included in this bill. **Mr. Shoplock** said that none of the studies included the volunteer firefighters, and the cost of physicals were of concern to those departments. He said he thought the cost of worker's compensation premiums would skyrocket. **Mr. Shoplock** remarked that several states have insured volunteer firefighters. He disclosed that there is a high turnover with volunteer firefighters. **Senator Cameron** wanted to know whether there was a way physicals could be done that would not dramatically affect insurance rates. He wanted to find a "common ground." **Senator Cameron** stated that since firefighters are exposed to cancer-causing smoke, worker's compensation should apply to both career and volunteer firefighters. **Mr. Shoplock** said he agreed. He pointed out there is an active volunteer firefighter in the city of Eagle who has been with the department for quite some time, but who has not been on a fire call for 13 years, and if the volunteer firefighter was to be included in this bill, they would be covered.

Senator Martin asked about page 2, line 38 of the bill referring to leukemia. He wanted to know whether after six years of employment, if a firefighter was diagnosed with the disease, would he have to prove that the disease was a result of being a firefighter or would the firefighter have to prove whether the disease came from another source. **Mr. Shoplock** emphasized that if a firefighter were a non-tobacco user, a worker's compensation claim would be filed. However, if a physician says that the disease is not job-related, the burden of proof shifts back to

the firefighter.

Senator Cameron asked whether the initial employment medical screening examination outlined on page 2, line 27, was the same as a yearly physical. **Mr. Shoplock** said his own entry-level physical was much more in-depth than a yearly physical. **Senator Cameron** and **Mr. Shoplock** discussed whether or not there was a concern raised about this bill from the Industrial Commission. **Mr. Shoplock** said the bill was brought before the Industrial Commission and all felt this was a good, comprehensive document.

Senator Goedde remarked that it appears that Idaho already has presumptive statutes for occupational diseases, such as heart, lung, and infectious diseases. He wanted to know if that was prior to the insertion of Section 14. **Mr. Shoplock** said that question would be better answered by the worker's compensation attorney, Richard Owen. He said he believed there was a ruling from the Attorney General, as well as comments from Representative Luker, about whether presumption existed, but would defer to the attorney.

TESTIMONY:

Gary Rohwer, representing the Idaho State Fire Commissioner's Association (Association), past president, and Fire Commissioner from the Rural Fire District, referred to the letter he previously sent to the Committee and revealed there has been opposition to the bill as currently drafted due to two primary reasons. The first reason is that not all firefighters are covered and the second reason is the Association does not have a good understanding of what the true fiscal impact will be on the districts. The Association wants all firefighters to be covered. He remarked the majority of firefighters in the State are volunteers. The diagnosis must occur within a reasonable time frame. He stated their goal should be to come up with a mechanism that would service the whole industry. **Senator Goedde** asked Commissioner Rohwer if physicals were provided for paid staff. **Commissioner Rohwer** indicated that physicals were provided for both paid firefighters and volunteers. **Senator Goedde** asked how much additional cost would be involved in bringing the physicals up to the level that is suggested in the pending legislation. **Commissioner Rohwer** said "\$700 multiplied by 570 people, which is nearly \$400,000." He emphasized the total budget in his district is \$600,000, and the \$400,000 would be a significant chunk out of their tax base. **Vice Chairman Patrick** commented that he was surprised at the \$700 fee. **Commissioner Rohwer** replied he did not know how well an entry-level physical of any type would predict the onset of cancer in the future.

Danny Renfro, Board Member of the Idaho State Fire Commissioner's Association and a Commissioner at the Wilder Fire Department, stated that he thought it was wrong to state that one group can have worker's compensation, while the other group could not. He emphasized that when firefighters go into a burning building, they all go in together and are not two separate groups. They work as a team and they all perform the same duties. There should not be two separate classes of firefighters that are both working to come to the same end.

Richard Owen, a lawyer in Nampa who represents firefighters, spoke about presumption. **Mr. Owen** commented that without presumption, his job before the Industrial Commission is to prove how many times a firefighter has been exposed to smoke, what is in the smoke exactly, and how does that cause cancer. He disclosed that without presumption, he was not sure he could prove his case. In order to win a case, he had to prove how many times a firefighter was at a scene inhaling smoke, what kind of products were burning, what kind of chemicals were involved in the smoke, along with a long list of things. Without the presumption, he has to prove all of those things. The Industrial Commission (Commission) is not going to make an assumption that because a firefighter is at a scene for his 30

years, he is going to inhale enough smoke of a certain kind to get cancer. That is up to the firefighter to prove. **Mr. Owen** remarked there have been studies conducted about professional firefighters and the studies have been discussed at Commission meetings. He disclosed that without presumption the Association will have a very difficult, if not impossible, time trying to prove that one of these cancers was caused by the firefighter's work. He emphasized the presumption that is in place in Idaho Code § 72-438 is partial presumption. The Code says that the diseases listed in Subsection 12 on page 2, line 10, "Cardiovascular or pulmonary or respiratory diseases of a paid fireman", those are presumed to be at work and the firefighter actually came into contact with those hazards. It does not prove causation. A firefighter still has to prove that these exposures lead to these problems.

Senator Goedde commented that Mr. Owen was talking about the difficulty in collecting enough evidence to prove that a firefighter contracted this disease while in the employment of a fire department. He remarked that the employer has a difficult job in trying to track the other number of hours a day that the firefighter is out on their own and not in the employment of the district, not to mention all the opportunities that the person may have had to be exposed to hazardous chemicals or any other carcinogenic substances. He thought that burden would be much greater for the employer rather than for the firefighter and he asked for Mr. Owen's comments. **Mr. Owen** said he respectfully disagreed. He outlined cases where presumption has been applied to a case and they were rebutted by a single doctor's letter that said the disease was not caused by work. He gave examples, such as the firefighter was a drinker or engaged in some other type of activity, such as riding motorcycles or exposure to gas in the garage at home, and mentioned that any of those things by themselves rebut the presumption.

Senator Schmidt asked Mr. Owen for his legal opinion and said that in reading the definition of firefighters on page 2, lines 22 through 24, "if he fought fires for the forest service for five years, was he a firefighter?" **Mr. Owen** answered that a firefighter would have to work more than five years to qualify for any of these protections.

Senator Cameron asked Mr. Owen to explain the levels of presumption from the current standard we have today. **Mr. Owen** explained that an employee had to prove that they were actually exposed and a risk of injury had been sustained. They also had to prove the risk of injury sustained was peculiar to the occupation or employment. The first two items would not have to be proven if a firefighter qualified under any of the other categories under Idaho Code § 72-438. However, firefighters would still have to prove they had at least 60 days of exposure to the risk, that notice was given within 60 days when told by a physician there was a problem, and that the risk faced at work actually caused the problem. **Senator Cameron** said that in this proposed legislation, "we take it all the way to presumption. Did we consider it to be a partial presumption?" **Mr. Owen** said they used models from 21 states and a partial was not considered. **Senator Cameron** asked if a partial presumption would be less costly to fire districts and the Commission. **Mr. Owen** remarked that it was possible, but he did not have the expertise to answer the question. One comment was if the definition of firefighter remains the same, it would be less costly to have a partial presumption. If volunteers are included, he said he thought "that skews the conclusion" because of the lack of physicals and exposures. **Senator Cameron** queried "how can a physical determine whether there is a propensity or a genetic disposition for cancer?" **Mr. Owen** said that a physician would have to answer that question.

Mr. Shoplock said he has learned patience and persistence and thanked the Committee. He appreciated all of the conversations. The studies that are used put firefighters at one-and-a-half to two times more likely for certain cancers. He

emphasized that for the firefighters that he represents, that this is the right thing to do. When an illness is caused by work, the avenue to take care of it should be through worker's compensation and not private insurance.

Senator Martin said he had a general question on the fiscal impact regarding an expected premium increase from 2.3 percent to 7.8 percent. He said it did not seem like Mr. Shoplock was estimating that there would be much cost and asked Mr. Shoplock to address his concerns. In response to the question, **Mr. Shoplock** remarked this draft legislation came from New Mexico and the National Council on Compensation Insurance (NCCI) who quoted nearly the same increase in worker's compensation premiums. New Mexico has not seen an increase and actually had a claim that went through and never saw an increase. When Vermont passed their legislation, which is more comprehensive, premiums were reduced in consecutive years and they believe it is the "healthy worker" effect.

Senator Guthrie referred to page 2, line 25, "If a firefighter is diagnosed with one or more of the following diseases after the period of employment" and commented that if a firefighter was diagnosed with brain cancer after 9 years, this is not applicable, but if it is after 11 years it is applicable. He asked if his understanding was correct. **Mr. Shoplock** said that was correct and the employee would have to testify before the Commission and try to prove their case.

Senator Goedde said he attended the fire chief's meeting in Coeur d'Alene and the chief from Sandpoint indicated that 93 percent of the fire departments were volunteer. What percentage of personnel were volunteers versus professional? **Mr. Shoplock** replied that to the best of his knowledge there are roughly 6,000 volunteers and 1,100 to 1,200 professional firefighters.

Senator Cameron asked "how could a physical determine that a person has a propensity or lack of a propensity for cancer." **Mr. Shoplock** remarked they do not do swab tests. A baseline questionnaire is used which covers family history, previous occupations, and changes in habits. He indicated the comprehensive physicals have increased dramatically. He disclosed that according to the physicians at Johns Hopkins, they are saying the average firefighter is up to two times more likely to contract those types of cancers. **Senator Cameron** said the figure of \$700 per physical was mentioned and asked Mr. Shoplock to describe what was included in the physical. **Mr. Shoplock** answered that the physical included fasting blood work. He said there are over 50 different things that are looked at in the blood test. A urine sample, spirometry, chest xrays, a comprehensive testicular exam for males and a comprehensive breast exam for females, treadmill tests, EKG, stretching, coordination, and eye testing are also included as part of the physical.

Senator Guthrie asked Mr. Shoplock if he had any data on how many hours of exposure to smoke volunteer firefighters had versus professional firefighters. **Mr. Shoplock** revealed he was not aware of any data on volunteer firefighters, but that he had asked for the data for the past four years and what language they would like changed. He commented he has not done much research on the volunteer departments.

Letters of support were received from the Eagle Fire Department, Gary Stillwell, Commission Chairman; Northern Lakes Fire Protection District, Dean S. Marcus, Fire Chief; Coeur d'Alene Fire Fighters L710; Spirit Lake Professional Firefighters Local 4336, Matthew T. Wier, President International Association of Fire Fighters; Justin Capaul, Kootenai County Fire Rescue Local 2856; Richard Nordstrom, President of Kootenai County Fire Rescue Administration; and Daniel M. Ryan, President, North Idaho Fire Chief's Association.

E-mails were received from Edward Morris, Twin Falls; David "Rudy" Rudebaugh, President, Board of Commissioners, Timberlake Fire Protection District in support of this bill.

An e-mail was received from Louis K. Monson, Volunteer Firefighter/EMT, Murphy Reynolds Wilson Fire District in opposition to this bill.

MOTION:

Senator Martin moved that **S 1273** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Lakey commented that he supported the motion. This was the first step, that everyone has the same goal, and that if the volunteer firefighters want to be included they should bring appropriate language forward next year. **Senator Martin** agreed and was in support of the bill.

Senator Goedde disclosed that he is on the Board of the State Insurance Fund (Fund) and that is the entity that will be adjudicating these claims if they go to the Commission. He remarked he was amazed when Mr. Owen said that a single doctor's letter could refute the assumption of presumption. **Senator Goedde** explained that every policyholder that has a policy from the Fund will pay the additional cost of the investigation in trying to refute presumption. That is not a cost that will be associated with a particular classification. The cities or departments that employ firefighters will not see an increase in rate because of that. Every policyholder will see an increase. He agreed with Senators Lakey and Martin that we are faced with a huge inequity. Volunteer departments typically don't have the same quality of gear as paid departments. If the department pays for the chief's physical, he is going to have coverage and the people he is sending into the fire will not, which disturbs him. This is a step that may need to be taken.

Vice Chairman Patrick commented that the Association worked on the bill over the years and if there was a desire to include the volunteers, they should come forward to add onto the bill.

Senator Guthrie indicated he was in favor of the motion and commented that a fair amount of research has been done. There is an opportunity for evidence to be challenged with the burden of proof on the firefighter or their family, and he thought this bill would require some followup in subsequent years, but it was a good first step.

The motion carried by **voice vote**. Senator McKenzie will carry the bill on the floor of the Senate.

Relating to Payday Loans was presented by Senator Heider. **Senator Heider** outlined this legislation which would require that no additional fees shall be collected by the lender for renewal of loans. A limit of 25 percent of the monthly gross income of the borrower will be the maximum of any payday loan, as proven by the borrower. The borrower may present a pay stub or sign in writing that this loan does not exceed 25 percent of their gross monthly income. Payday lenders shall not present the borrower's check more than twice to the depository institution. This bill allows borrowers to enter into an extended payment plan to complete their payments at no additional charge.

Senator Heider remarked he had worked with payday lenders and with users of payday lending. This bill benefitted borrowers. He explained that sometimes people cannot make payments on a loan. The option is to make another payment and then the fees increase. The fees continue to increase so that all the borrower is doing is making payments to keep the loan intact. **Senator Heider** described that with this bill, the loan can be converted to an extended loan with no interest and no fees. This bill provides an "out" for those caught in the cycle. Loans are for short-term financial needs. The intent was never to run payday lenders out of the State.

Vice Chairman Patrick asked what if the borrower took out a loan, but never came back to make a payment. **Senator Heider** answered the borrower was under the same obligation to the lender to pay back the loan.

Senator Guthrie questioned the additional renewal fee of \$20 and asked "if the loan was converted to an extended payment, were there no fees?" "What would be the motivation to pay the \$20 and renew the loan?" He commented it appeared that borrowers would convert their loan to an extended loan. **Senator Heider** mentioned that most borrowers renew their loans every two weeks and pay the renewal fee, which add up. He said the benefit is to convert the loan to an extended payment loan and the borrower would be able to pay the loan off over an extended period of time without incurring additional fees. **Senator Guthrie** commented that if interest is 36 percent on \$1,000, the borrower would pay \$360 if they had the loan for a year. He wanted to know if interest would accrue on the additional months. In response to the question, **Senator Heider** explained that was the way the banks work, but payday lenders do not work that way. Payday lenders charge every time the loan is renewed. Fees are charged at the beginning of the loan and not over a monthly time schedule. If the loan was due and payable in two weeks, and the borrower wanted to renew it, the fee would be another \$360. **Senator Guthrie** asked Senator Heider to clarify his example of someone borrowing \$1,000 at 36 percent interest for a month, that would be \$30, plus the \$20 fee. He remarked that if a borrower converts to an extended loan, the lender can charge no more than \$50 for the entire year and there is no additional opportunity for interest. **Senator Heider** reiterated that was not the way a payday lender worked. He explained that the loan fees are collected at the inception of the loan and it is not like a conventional bank loan. Under the proposed bill, a borrower can convert the loan to an extended payment plan.

TESTIMONY:

Steve Thomas, Consumer Lending Alliance, testified that Idaho Title Loans makes predominantly title loans. Ten or 15 percent of the loans they make are payday loans, in addition to title loans. He thought the bill was generous and raised the bar on the industry in favor of the borrower. He was here in support of the bill because of the fairness and openness of the process. The extended payment plan and the 25 percent payment cap are the two main virtues of this bill and the proposed legislation helps with a cleaner audit trail.

Senator Guthrie asked that if he was a borrower of money that was due in two weeks, and he paid the fees up front, but he extended the loan for the year, would he only owe on the principal and the fee. **Mr. Thomas** said that as a matter of law, there is no interest but a fee. If the borrower cannot make the payment, there is a choice. The borrower can either renew the loan up to three times or switch over to the extended payment plan for one year. If a borrower chooses the extended payment plan, no money would be owed other than the principal with no additional fees. **Senator Guthrie** asked "why would payday lenders give up what they are going to make in two weeks and agree to take an extended loan, when the client is high risk." **Mr. Thomas** replied that the bill is not perfect for payday lenders, but it brings clarity. Payday lenders do not want to have to go to collection with a borrower. They want to help the borrowers pay the loan off. The statutory cap is \$1,000, the average loan is \$372 and the average period is 18 days. **Senator Guthrie** asked if the initial service cost would be increased to mitigate the probability of more extended loans and a loss in revenue. **Mr. Thomas** said that he could not predict the future and there is competition in the industry. **Senator Martin** asked Mr. Thomas "if the bill passes, what will be the effect upon the industry?" **Mr. Thomas** replied that he thought that some of the less "sterling" members of the industry may drop out.

Senator Schmidt asked if there was a current limit that the industry sets for 25 percent of a borrower's income. **Mr. Thomas** replied there was no rule or statute establishing such a number, but there is a custom in practice of about that level.

Ken Scholz, Caldwell, Idaho, commercial appraiser, Board Member of the Planning and Zoning Commission, Caldwell, said the payday loan business was an intolerable situation and it is shameful that these predatory lenders have been allowed to operate untethered to prey upon the poor, uneducated and elderly. He said that at least 13 other states have done something about the situation and made payday loan companies illegal or not feasible. Many of the other states that allow these lenders have capped interest rates that limit how much consumers can be charged and Idaho has done nothing. He said he opposes the bill.

Kathryn McNary of Caldwell, said she was from a low income family that needed the basics. She said she has no health care coverage and does not buy some of her medications due to this fact. She took out a payday loan and got deeper into debt, losing her vehicle because of it. She said there was a need to cap the interest rate and extend the time of the loan. She was opposed to the bill.

Terry Sterling, Executive Director of the Idaho Community Action Network, testified that payday loans were a problem and there needed to be a statewide solution. She remarked the real problem is eroding the little resources that poor working families have and impacting the quality of life in Idaho. She said the Pew Charitable Trust recommends that states take three steps that will stop the predatory behaviors: Limit the payments to an affordable percentage of a borrower's income, such as 5 percent, spread the costs evenly over the life of the loan, and guard against harmful repayment or collections practices. She was opposed to the bill.

Frank Monasterio, representing the Voice of the Poor, which is the advocacy arm

of the Society of St. Vincent de Paul, spoke in opposition to the bill because he said it does not constitute real reform that protects Idahoans from predatory lenders. He said that hard working families, especially those that are struggling, need protection from unscrupulous lending practices. Payday lending restrictions should include usury limits, reasonable lending caps, and loan terms that take into account a consumer's ability to repay. He summarized that **S 1314** Section 3, has provisions on loan amounts based on a borrower's gross income but does not stop the debt trap. When all of the fees and interest payments, as well as the employment taxes are considered, a borrower could owe more than 50 percent of their bi-weekly income to a payday lender. Neither does the bill's Section 4 provisions on payment plans stop the debt trap. Data from states with similar provisions show that payment plans have not provided effective relief. Lenders seem to discourage their use. States that collect data on repayment plan usage report that fewer than 3 percent of eligible borrowers utilize the extended payment plans. He urged the Committee to put off acting until the Federal Consumer Financial Protection Bureau has established a national rule on payday and other types of small dollar credit.

Senator Schmidt indicated that what he was hearing from those who opposed the bill was that they did not think it went far enough, and would those in opposition like to have the bill defeated? **Mr. Monasterio** said that was what they are urging the Committee to do. **Senator Schmidt** stated there would be less protections than there are now and asked if that was what Mr. Monasterio was asking for. **Mr. Monasterio** remarked these protections are essentially ineffective altogether and they would create the appearance of protection, when, in fact, no protection has come into effect that would be useful in preventing the enormous damage that the industry fosters.

Ruby Mendez, Idaho Community Action Network intern, read testimony from JoAnn of Caldwell, who could not come to the meeting today. She said her husband was a gambler and took out loans from several payday lenders. The result was they were \$10,000 in debt and lost their home. Today they are still paying off the loans. Payday lenders do not cross-reference loans, which allowed her husband to take out numerous loans. She was in opposition to the bill.

Cristina McNeil, realtor, testified in opposition to the bill. She said the poverty rate in Boise was 19.2 percent. Payday lenders do not tell a prospective borrower that when they apply for a mortgage loan, it is denied even though the payday loan was paid in full. She said that 80 percent of people who apply are denied a mortgage loan.

Michael Larsen, Consumer Finance Bureau Chief, Department of Finance (Department), testified in support of the bill. He commented he was fully aware there is opposition to payday lending. The Department regulates the industry of payday lending. He said he wanted to emphasize that financial literacy was a high priority for the Department. This bill would help protect borrowers. At the outset of this process, Senator Heider asked the Department to work with him and gather some information from other states as to how they addressed some of the issues heard today. The Deputy Attorney General looked at areas where Idaho law could be improved upon to help payday loan borrowers. There were some people who thought the law did not go far enough. He said there was a lot of misunderstanding as to how the product worked.

Senator Goedde commented that if Mr. Larsen was supporting this bill, the Department must think this is an improvement. **Mr. Larsen** replied that the proposed bill takes positive steps, and adds additional consumer protections that would help borrowers who find themselves in trouble with this product.

Trent Matson, Government Affairs Director for Moneytree Lending, testified in support of the bill. He said the extended payment plan does work and helps to eliminate a cycle of debt. He said that **S 1314** improves upon consumer protections, provides the Department of Financial Institutions with better enforcement standards and maintains a viable, regulated industry.

Krista Bustamante, Idaho Community Action Network, testified in opposition to the bill. She recommended an amendment with a rate cap. She said the bill does not go far enough and does not allow enough protection.

Letters were received in opposition to the bill from Mayor John Bechtel, City of Wilder and Mayor Garret L. Nancolas, City of Caldwell. A petition was received in opposition to the bill from the Idaho Community Action Network.

Senator Heider summarized and said that payday loans charge a tremendous percentage, but the benefit is that it is the only fee a borrower will pay if they decide to amortize the loan and this bill gives a borrower an out. He urged approval by the Committee.

MOTION: **Senator Martin** moved that **S 1314** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion.

Senator Martin urged all who opposed the bill to work with the Department to come up with better language and that this bill is a modest start.

Senator Lakey said he appreciated the collaborative effort and the testimony, but he was not going to support the motion because he did not think this was an area in which the government should dictate in the free market.

Senator Guthrie commented that if the bill passes, we will be looking at extended loans, but he said it will be mitigated by increasing the up front costs, and he does not support the motion.

Vice Chairman Patrick said he thought the language of the bill was generous. He supports the motion.

ROLL CALL VOTE: **Vice Chairman Patrick** called for a roll call vote. **Senators Cameron, Martin** and **Vice Chairman Patrick** voted **aye**. **Senators Guthrie, Lakey, Schmidt** and **Ward-Engelking** voted **nay**. The motion **failed**.

S 1359 **Relating to Exemption from Coverage from Worker's Compensation Law** was continued to the next meeting.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:12 p.m.

Senator Patrick
Vice Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 06, 2014

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes - February 18, 2014	Senator Lakey
<u>S 1314</u>	Reconsideration: Payday Loans	Senator Heider
<u>S 1359</u>	Relating to Exemption from Coverage from Worker's Compensation Law	Senator Dan Johnson
<u>S 1363</u>	Relating to Licensure of Genetic Counselors	Heather Hussey and Jennifer Eichmeyer, St. Luke's Hospital
<u>H 346</u>	Relating to Landscape Architects Registration and Licensing Act	Roger Hales, Bureau of Occupational Licenses
<u>H 347</u>	Relating to Idaho Real Estate Appraisers Act	Roger Hales
<u>H 359</u>	Relating to Driving Business	Roger Hales
<u>H 360</u>	Relating to Architects	Roger Hales
<u>H 363</u>	Relating to Cosmeticians	Roger Hales

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 06, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:31 p.m. and welcomed all.

MOTION: **Vice Chairman Patrick** moved to approve the Minutes of February 13, 2014. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

MOTION: **Reconsideration of Vote: Payday Loans - S 1314. Senator Ward-Engelking** moved to reconsider the vote on **S 1314. Senator Cameron** seconded the motion.

Chairman Tippetts explained the process. He said the rules of the Senate allow the Committee to reconsider a vote that has been taken. He noted that any member voting on the prevailing side of the vote can make a motion for reconsideration, as long as the bill was held in the Committee. He indicated the motion is debatable as to whether or not the Committee will reconsider the vote. He explained that if the motion passed, debate would be open among the Committee members and a vote would be taken. **Chairman Tippetts** explained there would be no more testimony since there was full testimony taken at the last meeting. He emphasized there was nothing underhanded or tricky, and while it does not happen often in Committee, it is not uncommon, and he has seen a motion to reconsider many times over his legislative career.

Senator Martin spoke in favor of the motion and expressed his concern that **S 1314** had not received a full vote from the Committee, with several members having excused absences. **Senator Lakey** was in support of the motion and agreed with Senator Martin. **Senator Guthrie** indicated he would support the motion and the reconsideration.

The motion carried by **voice vote**.

MOTION: **Senator Martin** moved that **S 1314** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Martin said he believed the idea of payday loans has been worked on for several years. He believed that those opposed had an opportunity and would continue to have the opportunity to either modify the language or to come up with their own proposals that would be better for them. He said this was a good step in the right direction. The Legislature would have the opportunity in the future to continue to modify the legislation.

Senator Lakey indicated he was against the motion and his position had not changed, as he did not believe in government control on these issues. **Senator Guthrie** commented he was in opposition to the motion. He explained that we are creating an opportunity to transition from payday loans to extended payment loans and there is nothing to prevent increasing loan fees beyond what is typical practice today. **Vice Chairman Patrick** commented this motion will make it easier for people who borrow money and that the old way was worse. **Senator Ward-Engelking** commented this was a good way for people to be able to pay off their loans.

ROLL CALL VOTE: **Chairman Tippets** called for a **roll call vote**. **Senators Cameron, Goedde, Martin, Schmidt, Ward-Engelking, Vice Chairman Patrick** and **Chairman Tippets** voted **aye**. **Senators Guthrie** and **Lakey** voted **nay**. The motion **carried**. Senator Heider will carry this bill on the floor of the Senate.

MOTION: **Senator Lakey** moved to approve the Minutes of February 18, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

S 1359 **Relating to Exemption from Coverage from Worker's Compensation Law** was presented by Senator Dan Johnson. **Senator Johnson** said the owner of a sole proprietorship and his family members working in their business are exempt from worker's compensation under Idaho Code § 72-212. This legislation clarifies that a single member limited liability company (LLC) that is being taxed as a sole proprietorship is also treated as a sole proprietorship for purposes of the worker's compensation exemption. He noted this legislation will have no effect on the State General Fund, but could result in up to \$8,000 in lost revenues to the Industrial Commission annually, if all single member LLCs were otherwise not recognized as sole proprietorships. **Senator Johnson** said he had the Citizen's Advisory Committee review this proposed legislation and there was no opposition.

MOTION: **Senator Cameron** moved that **S 1359** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Johnson will carry this bill on the floor of the Senate.

S 1363 **Relating to Licensure of Genetic Counselors** was presented by Jennifer Eichmeyer, Genetic Counselor. **Jennifer Eichmeyer** thanked the Committee for the opportunity to testify. She stated she has been a practicing genetic counselor in Idaho for 12 years. **Ms. Eichmeyer** explained she was representing her Idaho genetic counseling colleagues, all of whom fully support this proposal and have actively participated in the development of this bill. She noted that genetic counselors are healthcare professionals who have masters degrees with specialized training in medical genetics and counseling theory. They work in various clinic settings collaborating with other medical professionals, interpreting family and medical histories to assess risk of disease, educating families about inheritance, genetic testing, disease management, prevention, and available resources. Genetic counseling is a consultation service translating complex information into accessible content to be used at the discretion of the primary medical provider and the patient. Although genetic counselors have a national certification process with a rigorous board examination and continuing education credits, this certification is voluntary.

In January of 2014 a number of insurance companies changed policy criteria to require genetic counseling before payment of specific genetic tests.

Ms. Eichmeyer explained that currently in Idaho, any individual can hold himself or herself out as a genetic counselor, which may include ordering, interpreting, and acting on genetic test results. Without verification of the proper training, misunderstanding may lead to inappropriate and catastrophic medical intervention, emotional injury, and financial loss. Additionally, a lack of appreciation for privacy concerns may leave individuals vulnerable. She commented that the enormous growth of genetic tests and genetic testing companies makes this a serious and urgent matter for our state. Occupational licensure in Idaho is a recognized process in healthcare which helps the public determine who is a qualified provider meeting minimum competency standards. Given the sensitive and consequential nature of genetic information, licensure will help to ensure that quality genetic counseling services will be delivered to the people of Idaho. The involvement of properly trained genetic counselors has been shown to improve medical and psychological outcomes as well as reduce health care costs.

Ms. Eichmeyer explained that the legislation excludes healthcare professionals such as physicians, nurse practitioners, and others whose scope of practice already involves some components of genetic counseling. This legislation is intended to ensure consumers and healthcare providers that the individuals who provide genetic counseling and publicly call themselves genetic counselors have the necessary qualifications to do so. **Ms. Eichmeyer** indicated that the Genetic Counseling Licensing Board (Board) will be self-sustaining through the licensing fees, and they do not expect the licensing Board's expenses to have a fiscal impact on the State of Idaho based on the experience of other states with genetic counseling licensure.

Ms. Eichmeyer said they have worked with Tana Cory at the Idaho Bureau of Occupational Licensure for several years to understand how self-governing boards operate, and we have used this information in development of our business plan. She pointed out that there are 19 states with genetic counselor licensure. The first state to license genetic counselors was Utah in 2001 with 14, with ongoing efforts to establish licensure in the remaining others. Licensure has helped in increasing access of services by drawing more genetics professionals to the region. Utah has seen their genetic counselors grow to nearly 100 since licensure passed. **Ms. Eichmeyer** said there were only ten licensed genetic counselors in the State. **Chairman Tippetts** asked all of them to stand to be recognized.

In working with the Senate Health and Welfare Committee, **Ms. Eichmeyer** said they have learned many valuable lessons, and they have applied those thoughtful and helpful suggestions to their bill. They are committed to persevere as licensing of genetic counselors is an extremely important issue for the people of Idaho.

Senator Goedde asked Ms. Eichmeyer if she was aware of anyone holding themselves out to being a genetic counselor. **Ms. Eichmeyer** said that some may, but most of the genetic counselors were in southern Idaho.

Senator Cameron asked what the role was of a genetic counselor, the benefits of licensure, the attempted goal of licensing, and was Ms. Eichmeyer a licensed counselor. **Ms. Eichmeyer** responded that this was a unique, non-traditional medical profession. There is no license in any specialty. Licensure would bring protection for the public. She said they were experts in genetics, they helped interpret genetic tests and they help people with information that could potentially change their lives. **Senator Cameron** wanted to know when would one require a genetic counselor. **Ms. Eichmeyer** said she works with oncology patients, especially those who have been diagnosed with cancer under the age of 50. She said that was a red flag for a hereditary condition. She said a genetic counselor would evaluate, order and interpret tests and possibly recommend additional

screening. **Senator Cameron** wanted to know how genetic counselors were compensated for their time and service. **Ms. Eichmeyer** responded that billing was done under a doctor's name through the hospitals. However, she pointed out, that if they were to pass licensure, they could directly bill the insurance company, which would reduce costs.

Senator Guthrie asked about the term "genetic counseling license" and was there a title. **Ms. Eichmeyer** said that once someone passed the boards they would receive a Certified Genetic Counselor (CGC) title. **Senator Guthrie** commented that in Chapter 56, Section 54-5605 the definition of "genetic counselor licensure" was broad. He wanted to know who else would want to be a genetic counselor without the CGC title, and whether that would be problematic if someone wanted to be a consultant or an associate. **Ms. Eichmeyer** replied that she thought the exemptions would cover most of the individuals that may be calling themselves a genetic associate.

Senator Schmidt referred to page 2, line 40, "Any person employed as a genetic counselor by the federal government or an agency thereof if such person provides genetic counseling services solely under the direction and control of the organization by which he is employed" and commented that as he understood this language, if someone was an employed counselor, they were not required to be licensed. **Ms. Eichmeyer** said the language was in reference to a federal agency.

Chairman Tippetts referred to page 8, Section 54-5616, prohibited acts, "It shall be unlawful and a misdemeanor for any person to engage in any of the following acts: (1) To violate any of the provisions of this chapter and any rules promulgated pursuant thereto"; line 10, "(3) To practice, attempt or offer to practice genetic counseling"; and page 3, line 11, "A license shall be required to engage in the practice of genetic counseling"; and expressed a concern about the scope of practice being appropriate since only genetic counselors can practice except for the exemptions that were previously discussed. He pointed out a couple of items that seemed broad to him. He cited line 26, "Evaluate the clients or family's response to the condition or risk of recurrence and provide client-centered counseling and anticipatory guidance" and said it would be, according to the proposed legislation, inappropriate for those who are trained to provide counseling as counselors and social workers. He asked about line 31, "Provide written documentation of medical, genetic and counseling information for families and health care professionals" and said he wanted **Ms. Eichmeyer** to respond to the idea that the "scope of practice" seemed broader than it needed to be. Potentially people are being made criminals by charging them with a misdemeanor for doing something inappropriate. **Ms. Eichmeyer** responded that many of the individuals, such as a therapist or a counselor, would address initial concerns, which is within their scope of practice, and they would fall under the exemption. **Chairman Tippetts** clarified that anyone who is licensed to practice within their professional field is exempt.

Senator Cameron asked what the necessity was of making a violation a misdemeanor. **Ms. Eichmeyer** called upon Heather Hussey, genetic counselor, to answer the question. **Ms. Hussey** said she believed the reason violations were identified as a misdemeanor was because they were following the policy of the other 19 states, in addition to working with the Bureau of Occupational Licensure to identify the most appropriate way to impose a penalty upon someone who is providing genetic counseling inappropriately. **Senator Cameron** asked if her response would be the same for the \$1,000 application fee and the reason for the exclusion or denial of license in disciplinary proceedings that include habitual drunkenness. **Ms. Eichmeyer** said "yes." **Senator Cameron** also wanted to know about page 6, line 21, "the Board may refuse to issue or refuse to renew a license in a related field revoked or suspended" and asked **Ms. Eichmeyer** to define a

"related field." **Ms. Eichmeyer** responded that a "related field" would be the field of medical genetics as opposed to genetic counseling.

Senator Schmidt stated the requirements for licensing were a masters level in genetics plus board certification, and wanted to know if there was specific counseling training required for passing the boards. **Ms. Eichmeyer** responded that genetic counselors are trained in psycho-social counseling. **Senator Schmidt** clarified that to pass the boards there is a requirement for counseling training, but that is not true for a masters in genetics. **Ms. Eichmeyer** replied, "there is no counseling training for medical genetics."

Senator Lakey stated the penalty of a misdemeanor bothered him and asked if it was a misdemeanor if someone said they were a counselor and they were not. **Ms. Eichmeyer** said other states used the misdemeanor penalty, but she could not speak to the misdemeanor penalty if someone misrepresented themselves as a counselor.

Senator Guthrie stated he assumed genetic counselors were able to bill insurance companies and patients. **Senator Guthrie** asked if those who have not reached the status of genetic counselor, were they billing insurance companies. If so, did Ms. Eichmeyer see this as a change in the dynamics as to how insurance companies pay providers. **Ms. Eichmeyer** answered, "right now genetic counselors cannot bill under their own code, but there is a diagnostic code that genetic counselors can use." The billing is not reimbursable by the insurance companies. Currently, they bill under a physician's code and this legislation would change the dynamics of how billing occurs, which would be a more accurate reflection. **Senator Guthrie** wanted to know if one has a CGC license, if those individuals were allowed to bill and be paid through a physician network. **Ms. Eichmeyer** said that if an individual could have the CGC, they could bill by themselves.

TESTIMONY:

Anne Spencer said she represented genetic counselors in Idaho, and said she had the honor of having been the first genetic counselor to work in Idaho. She said she would like to add her perspective on the value of genetic counseling to the people of Idaho based on her own experience over the last two decades. She received her master's degree in Genetic Counseling from the University of California, Berkeley in 1991 and her certification from the American Board of Genetic Counselors in 1993. She began her career as a genetic counselor at Children's Hospital in Seattle in 1991 and then moved to Caldwell, Idaho in 1994. Her work during this time included providing genetic counseling for the State of Idaho Pediatric Genetics Clinic and Newborn Screening Program. Currently, she works with the Huntington's Disease Support Group, which supports families and patients who have a rare neuro-degenerative genetic condition that has severe adult onset consequences. During her first seven years here, she was literally the only genetic counselor in the State. People from all over Idaho would come to her with questions, needing assistance, or just trying to figure out how to find the resources they needed to take care of themselves, their patients, or their loved ones. Most genetic conditions that she saw were individually quite rare, occurring in 1 out of 20,000 people. For a rural state like Idaho, there may only be one child with a condition like tuberous sclerosis or William's syndrome born each year. For even rarer conditions like Lesch Nyhan syndrome, there may only be one or two people with the condition alive in the entire State. **Ms. Spencer** told the Committee to imagine being a family newly diagnosed with such a condition in their baby, not knowing how to pronounce the name of the condition, let alone what to do to help their child. Imagine being a primary care doctor trying to figure out how to diagnose a patient with a rare genetic condition, a condition only read about in a textbook. As a genetic counselor, she has been able to answer providers' questions about the best way to do follow up testing for a child who may have a rare life-threatening metabolic genetic disorder.

She said she has helped families whose children were diagnosed with a rare disorder become experts on their child's condition, by giving them accurate and current medical information. She has walked families through the process of getting important health screenings for a child with Down syndrome. And she has helped save money and time by making sure that the correct genetic tests were ordered in the most efficient and effective manner.

Ms. Spencer explained from the day she arrived in Idaho, it has been clear that there is a need for genetic counselors to help provide high quality medical services. The need has grown tremendously over the past 20 years. One of the lessons we have learned from the Human Genome Project is that we are all at risk for health conditions that have a genetic component. With increasing direct-to-consumer testing and aggressive marketing of genetic tests by pharmaceutical companies, there is also a growing risk of misunderstanding and misuse of genetic information, which can cause harm to individuals and cost the healthcare system unnecessary dollars. It is critical to ensure that genetic services are being provided by appropriately trained healthcare professionals. By enacting licensure now we can shape the provision of genetics counseling before the numbers are unmanageable. With the passing of this bill, consumers and referring healthcare providers can feel reassured that the individual who provides genetic counseling has the necessary qualifications to do so.

Wayne Hoffman, President of the Idaho Freedom Foundation, spoke in opposition to the bill. He said that genetic licensure is in effect in some states, but this bill calls for application fees of \$1,000 and other states charge less. He was concerned about the grandfather clause regarding licensure. He said more regulation has not made things less expensive and will deter people from entering the profession.

Amy Rohyans Stewart testified in support of genetic counselors. She explained that four-and-a-half years ago her little sister Becki, who had Down syndrome, died from complications of influenza H1N1 at the age of 34. Just three months later, her mother was diagnosed with stage 4 primary peritoneal cancer, which is a very rare form of cancer and related to ovarian cancer. Only three weeks later, her older half sister, Terri, was diagnosed with stage 3 lung cancer. Merely 4 months later at 47 years old, Terri died, leaving behind her three boys. **Ms. Rohyans Stewart** said her mom, after burying two daughters, said goodbye to her 8 months later at 67. Even though primary peritoneal and lung cancers are not related, her mom chose to undergo genetic testing to determine whether or not she was a breast cancer carrier. BRCA is the breast cancer gene which can also be associated with primary peritoneal and ovarian cancers. She said that by determining whether or not her mom was a BRCA carrier, she would be able to make decisions regarding whether or not she would seek additional genetic testing. The genetics counselor was so kind in guiding her through this process, but most of all she felt very secure in her substantial knowledge base. Her mom's results revealed she was not a BRCA carrier, thus reducing the risk for hereditary cancers. This was good news, yet her family history of cancer extends well beyond her mom and sister. **Ms. Rohyans Stewart** said her maternal grandmother died from late onset leukemia. Her paternal grandmother died from breast cancer that metastasized to ovarian cancer. Both her father and half brother were diagnosed with bladder cancer, and although neither died from their diagnosis, her brother is still struggling with tumors and treatments.

Ms. Rohyans Stewart shared that seven months ago she and her husband were blessed with an opportunity to pursue adoption of a beautiful five month old baby in foster care. Like her Auntie Becki, their foster daughter, now 13 months old, has Down syndrome and some typical and atypical health concerns, several holes in her heart (repaired in July), feeding concerns, hypothyroidism and hyperparathyroidism. Although all diagnoses have been concerning, the most challenging and atypical

has been that of primary hyperparathyroidism. She and her husband proceeded with testing and several weeks later and with great thanks, they've received notice that their daughter's genetic testing for multiple endocrine neoplasia type 1 (MEN I) and II came back negative, so they can cross these cancer causing genes off the list.

Ms. Rohyans Stewart said in addition to visiting with her about her daughter, Ms. Eichmeyer took the time to talk to her about her family cancer concerns. Now, she is 43 years old and wants to be sure she is healthy for as long as possible for their two beautiful daughters. **Ms. Rohyans Stewart** said that Ms. Eichmeyer patiently heard her story, took judicious notes and talked to her about which cancers are potentially related and which are most concerning. She said she was so impressed with Ms. Eichmeyer's thorough command of the information and data that she felt armed with solid questions and information to take to her physician for future planning.

Ms. Rohyans Stewart summarized and said what she has come to realize is that genetic testing is becoming increasingly complicated every year, and it is touching the lives of more and more people. She is a Certified Child Life Specialist at St. Luke's Children's Hospital and works closely with registered, certified and licensed practitioners every day. She completely appreciates and supports the movement to fully recognize the significant training, skill level, expertise and competence necessary for genetics counselors to properly assist patients and families. Patients and families of Idaho deserve the protection licensure provides when, at this point in time, any unqualified individual may call themselves a genetic counselor.

Ms. Eichmeyer thanked the Committee for considering this bill.

MOTION:

Senator Ward-Engelking moved that **S 1363** be sent to the floor with a **do pass** recommendation. **Senator Goedde** seconded the motion.

Vice Chairman Patrick commented that he had not heard of genetic counselors until recently and he believed there were people who were not qualified, but the \$1,000 application fee was of concern to him. **Senator Cameron** commented he was troubled by the misdemeanor language and did not recall having a misdemeanor penalty for any other license in Idaho. He said the application fee of \$1,000 was too high and needed to be reworked and he opposed the motion.

**ROLL CALL
VOTE:**

Chairman Tippetts called for a **roll call vote**. **Senators Goedde, Schmidt, Ward-Engelking** and **Vice Chairman Patrick** voted **aye**. **Senators Cameron, Guthrie, Martin, Lakey** and **Chairman Tippetts** voted **nay**. The motion failed.

H 346

Relating to Landscape Architects Registration and Licensing Act was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said this bill is brought on behalf of the State Board of Landscape Architects (Board). The Board regulates the practice of landscape architects in the State. This bill provides a benefit to individuals in the process of qualifying for a license as a landscape architect, which requires certain education and passing a national exam. This bill would allow an individual to use the title "Landscape Architect in Training" upon completion of their education. Once they pass the national exam they would qualify for licensure. Current law requires an individual meet the same qualifications for a license in order to use the title "Landscape Architect in Training". There has been no opposition to this bill.

MOTION:

Senator Guthrie moved that **H 346** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry this bill on the floor of the Senate.

H 347

Relating to Idaho Real Estate Appraisers Act was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said the bill is brought on behalf of the Idaho Real Estate Appraisers Board (Board), which regulates the practice of real estate appraisers in the State. The Board and state appraisers are subject to significant federal regulations and oversight and this bill is brought to comply with new federal requirements. New federal law and regulations require that state appraiser licensing boards must run criminal background checks on all new applicants by January 1, 2015. This bill will facilitate the Board's ability to obtain criminal background checks under both the state and federal criminal records systems through the Idaho State Police. There has been no opposition to this bill.

MOTION:

Senator Goedde moved that **H 347** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry this bill on the floor of the Senate.

H 359

Relating to Driving Business was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** said this bill is brought on behalf of the State Driving Businesses Licensing Board (Board). He said the Board regulates the practice of private driving businesses and instructors in the State. The bill expands the opportunities for Board membership to licensed instructors. Present law limits Board membership to licensed business owners who have at least five years of experience. **Mr. Hales** explained the new law would still require at least one business owner and one public member on the Board. The bill deletes or clarifies language associated with the original Board. This proposed legislation will also allow the Board to waive the apprenticeship requirement for a license as a driver instructor if they possess a license from another state with the same training as Idaho, or have other training and experience. There has been no opposition to this bill.

MOTION:

Senator Guthrie moved that **H 359** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

H 360

Relating to Architects was presented by Roger Hales, Bureau of Occupational Licenses. **Mr. Hales** indicated that this bill is brought on behalf of the Board of Architectural Examiners (Board) which regulates the practice of architecture in the State. This is a self governing Board made up of practitioners and updates the nationally-administered internship in Idaho Code § 54-302. **Mr. Hales** said the internship is no longer measured in a term of years, but rather is based upon an intern's successful completion of certain modules, and the changes are reflected in this section. This bill updates Idaho Code § 54-303 by clarifying that the Board approves the national examination, but does not conduct it. This bill revises the Board's disciplinary statute in Idaho Code § 54-305 by eliminating the current two-year limitation on the Board's ability to restrict an architect's license who has violated the chapter. Also added in this section are two additional grounds for the discipline of an architectural licensee where the licensee has been disciplined by another state or where the licensee fails to comply with a Board order entered in a disciplinary matter. **Mr. Hales** stressed it is important that the Board be able to discipline an Idaho licensed architect regardless of where their wrongful conduct may have occurred. Additionally, adding a ground for the violation of a Board order is based upon a recent Idaho Supreme Court case which provided that the Board could not discipline a licensee who violated a Board order unless such was a ground for discipline.

Mr. Hales noted the bill revises Idaho Code § 54-307 to eliminate registration of firm names which are no longer necessary or appropriate and was an additional burden upon architects. Specifically, the bill will eliminate Subsection 3 which required firms to submit a sworn statement setting forth and listing all architects of the firm. The

bill updates the electronic seal requirements associated with an architect's seal.

Finally, the bill will eliminate Idaho Code § 54-316 which is the section governing foreign partnership and corporate practice. The Board feels that this regulation is no longer necessary or appropriate. The Board only issues licenses to individual architects. The Board doesn't feel it necessary to regulate the firm in which the architect practices.

Senator Lakey commented he liked the wording on page 3 relating to failure to comply with a board order. **Senator Schmidt** asked for a clarification on page 5, line 2, relating to an original signature. **Mr. Hales** explained that a facsimile or electronic signature would suffice and that an original signature was not necessary.

MOTION:

Senator Lakey moved that **H 360** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

H 363

Relating to Cosmeticians was presented by Roger Hales, Bureau of Occupational Licenses (Bureau). **Mr. Hales** indicated this bill is brought by the Board of Cosmetology (Board) which regulates the practice of cosmetology in the State. This is a self governing Board made up of practitioners of the profession. This bill reduces regulation and clarifies the law.

Mr. Hales said the bill accomplishes three things: adds an exemption, clarifies apprenticeships and clarifies a board member position. First, the bill eliminates regulation of a person practicing upon their relative without compensation, which was brought to the Board's attention by a constituent and their legislator. He commented that no health, safety or welfare concerns were in this bill. Second, the bill clarifies practice of apprentices, which cleans up language so it is easier to understand and follow. Third, the bill clarifies Board member qualifications as it relates to the school representative. **Mr. Hales** explained that Idaho Code § 54-828, regarding Board member appointments, requires that a "currently active cosmetology school representative" serve on the Board. The Board desires to eliminate the inconsistency in Idaho Code § 54-829.

The proposed changes were discussed at a number of open and noticed meetings of the Board. Information was shared with licensees, the State School Association and other stakeholders. There has been no opposition to this bill.

Senator Cameron thanked Mr. Hales, Tana Cory and the Bureau of Occupational Licenses for bringing this bill forward.

MOTION:

Senator Cameron moved that **H 363** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion.

TESTIMONY: **Kris Ellis**, Idaho Health, testified in support of the proposed legislation. She thanked the Board and the Bureau for their efforts.

Tony Smith, Northwest Career College Federation, testified in support of the proposed legislation. He said this was a good example of a negotiated agreement.

The motion carried by **voice vote**. Senator Cameron will carry this bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:48 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 11, 2014

SUBJECT	DESCRIPTION	PRESENTER
<u>H 358</u>	Relating to Risk-Based Capital for Insurers	Bill Deal, Department of Insurance
<u>H 397</u>	Relating to Supplemental Retirement System	Representative Steven Harris
<u>H 408</u>	Relating to Purchasing Division	Bill Burns, Department of Administration
<u>H 421</u>	Relating to Engineers and Surveyors	Representative Clark Kauffman
<u>H 475</u>	Relating to Health Insurance Exchange	Representative Luker and Senator Thayn
<u>H 498</u>	Relating to Film and TV Production Rebate Fund - Sunset Date	Representative Frank N. Henderson

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 11, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all. He mentioned the agenda would be rearranged to accommodate House members who were due on the floor shortly.

MOTION: **Senator Cameron** moved to approve the Minutes of February 20, 2014. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

H 397 **Relating to Supplemental Retirement System** was presented by Representative Steven Harris. **Representative Harris** said this bill repeals the obsolete Supplemental Retirement System (System) defined in Chapter 15, Title 59, Idaho Code which was established in 1975. He referred to the statute and explained there were provisions set forth for a System for widows of Governors, Senators or Congressmen, provided the spouse of the widow completed at least four years in one or more of those offices. **Representative Harris** outlined the System and the limits for those who were receiving a retirement allowance. In 1978, the Legislature passed a law to close any future enrollment. The program was closed in 1992 and any remaining funds were returned to the General Fund. There is no fiscal impact.

Senator Schmidt wanted to know if there was a balance in the supplemental retirement fund. **Representative Harris** indicated there was a balance of approximately \$170,000, which was transferred to the General Fund. He mentioned the entire fund was originally funded at \$250,000.

MOTION: **Senator Lakey** moved that **H 397** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

H 475 **Relating to Health Insurance Exchange** was presented by Representative Luker. **Representative Luker** indicated this bill requires that the Idaho Health Insurance Exchange (Exchange) marketplace allow for anonymous shopping and not require identifying information until the customer is ready to submit an application for purchase. It also provides that the site contain a warning regarding potential repayment of premium reductions if income information changes. There is no fiscal impact to the General Fund. There could be some programming cost to the Exchange which should be covered under construction grant funds.

A discussion ensued with **Representative Luker** and **Senators Thayn** and **Cameron** regarding logging on to the Exchange website and the improvements that have been made. **Senator Cameron** disclosed for the record under the rules of the Senate, that he has participated in and enrolled individuals in the Exchange through the use of the federal portal. He praised the Director of the Exchange for being responsive to the needs of the people. He commented that under the current federal system, the individual is asked to affirm that if they use the subsidy they may have to pay some of it back. He wanted to know whether Representative Luker was aware of the subsidy payback or whether he anticipated that the State would have a similar type of process reaffirming the process due to a change in circumstances for an individual, such as a divorce, the addition of a family member or an increase or decrease in income. **Representative Luker** explained that as things have progressed concepts have been put into place. Redundancy in the area of warning about the subsidy payback is an important piece. He commented that the bill is drafted with flexibility so that the Exchange could do whatever is necessary.

Senator Schmidt asked Representative Luker to comment on whether he sees the Legislature supplanting the role of the Exchange Board (Board) in terms of making recommendations. **Representative Luker** responded that it is the obligation of the Legislature to set parameters for the Exchange and that is why the additions to the bill are not detailed, but are there to set the basic policy. **Senator Schmidt** commented that the Board could set parameters without this legislation. **Representative Luker** indicated that was correct, but this bill is an expression of legislative policy. **Senator Schmidt** expressed his concern about the Legislature's role of micromanaging in this process. **Representative Luker** commented that he did not think the Legislature was micromanaging, but setting important public policy to protect the consumer.

Senator Goedde asked if the proposed legislation was supported by the Board. **Representative Luker** indicated that he had worked with the Board on the language for the proposed legislation and that they were supportive.

MOTION:

Senator Martin moved that **H 475** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor of the Senate.

H 421

Relating to Engineers and Surveyors was presented by Jeremy Chou, American Council of Engineering Companies of Idaho (ACEC) for Representative Clark Kauffman. **Mr. Chou** said this legislation codifies the existing engineering practice when design coordination requires the application of engineering principals and data and that this practice constitutes professional engineering. He gave a brief background and explained that in April of 2013, the Idaho Transportation Department (Department) released a Request for Proposal (RFP) to replace the existing bridge over the Boise River on Broadway Avenue. He went on to say that the work required the design coordination of a structural engineer for the bridge; a traffic engineer; and a geotechnical engineer for the roadwork, but the RFP allowed non-licensed engineers the opportunity to be the project manager. All of these interrelated activities required an engineer to integrate the plans and study for successful implementation. He explained that this was a concern for the ACEC, which is why this legislation was brought forth. **Mr. Chou** commented that this legislation codifies existing practice that design coordination is included in the definition of "professional engineering" under statute.

Mr. Chou indicated that members of the Board of Engineering and Land Surveyors are supportive and that all parties worked together to make suggestions and to discuss the language of this bill. There is no opposition to the bill and there is no fiscal impact.

MOTION:

Senator Goedde moved that **H 421** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

H 358

Relating to Risk-Based Capital for Insurers was presented by Tom Donovan, Deputy Director, Department of Insurance (Department), on behalf of Director Bill Deal (Director). **Mr. Donovan** explained that this proposed legislation seeks to amend Idaho Code Title 41, Chapter 54, which deals with Risk Based Capital (RBC) for insurance companies who hold a certificate of authority. He said that the certificate is issued by the Director to authorize companies to transact insurance within the State of Idaho. RBC is a regulatory tool to assist in the prevention of insolvencies and to help keep companies from getting in a dangerous financial condition. He reported that RBC provides a capital adequacy standard related to the degree of risk taken by a company. The RBC level is measured against a hypothetical level. Insurance companies are already required to file RBC Reports with their annual financial statement filings. If a company approaches a condition where there is concern based on its RBC level, there are incremental steps to address that, starting with the company submitting an RBC Plan to the Department on how it will improve its condition.

Mr. Donovan stated that Chapter 54 is based on a National Association of Insurance Commissioners (NAIC) model law, and amendments reflected in this legislation are based on updates to the Insurer RBC model law 312 and a separate RBC model law 315 for health organizations. He explained that these are entities required to be licensed by the Department, but the term is not so broad as to encompass health providers, such as hospitals or physicians.

He disclosed that his bill would do three main things. First, two other types of entities would be required to file an RBC report as a part of the annual financial statement filing they already make with the Department. The new entities are fraternal benefit societies and health organizations, the latter of which are defined as a "hospital service or professional service corporation" in Idaho.

Mr. Donovan stated that the framework for RBC reporting and monitoring lies with the insurance regulator in a company's state of domicile. There are no fraternal benefit societies domiciled in Idaho, and the states where fraternal organizations doing business in Idaho are domiciled already require RBC reporting. He said, practically speaking, because of this focus and primary financial regulation by the insurance regulator in the state of domicile, there are only two companies licensed under the Insurance Code who will fall under the new requirement to file RBC reports, and they are licensed as professional service corporations. One of those companies already voluntarily complies with RBC reporting.

He emphasized that the NAIC model law concerning RBC for health organizations long predates the Affordable Care Act (ACA). The model was first adopted in 1998 and last amended in 2009, and the Department's proposal to make this legislative change is in no way a response or reaction to the ACA.

Mr. Donovan commented that in addition to making good sense from the standpoint of financial solvency regulation, this legislation also contains an accreditation standard starting in January 2015 (which is the effective date of the bill), namely, the application of RBC requirements to "health organizations" or "hospital service and professional service corporations" licensed by the Department. It is important for the Department to maintain its accredited status with the NAIC. The accreditation program promotes regulatory efficiency. In particular, while all insurance regulators have the authority to examine all licensed companies doing business in their states, the laws provide that a regulator may accept the examination of a company

by a domiciliary regulator so long as that other insurance regulator is accredited. Therefore, while the Department remains accredited, an Idaho company licensed in multiple states will not be subject to multiple examinations, thereby saving Idaho companies time and money.

Second, **Mr. Donovan** pointed out that on page 4, line 11, the language moves the RBC triggering event for a Company Action Level Event (that first level where the Department can require a company to provide an RBC Plan) from 250 percent to 300 percent of the baseline RBC level where there is a negative trend (essentially declining financial experience) for life companies and health companies. He stated that this advances the early warning nature of the RBC system to require an RBC plan a little earlier to help avoid further decline. This would also bring the test for life and health companies in line with those currently in place for property and casualty companies.

Third, **Mr. Donovan** emphasized that the bill adds language on page 7 to clarify the confidential nature of RBC reports and related documents, such as RBC plans that a company would submit to the Department. The current law already provides that all RBC reports and related information that insurance companies file are not open to public disclosure and they are not even subject to subpoena. The new language would clarify that the RBC Reports and related information are not discoverable and not admissible in a private civil action, although the Department is authorized to use the information in any regulatory or legal action. Additionally, the Department would be authorized to share and receive confidential RBC information with other regulators and the NAIC. The NAIC often facilitates the sharing of information among states.

The Department knows of no opposition to this bill and there is no fiscal impact. **Mr. Donovan** disclosed he was authorized by Woody Richards to state that American Family, the Farm Bureau, and Allstate support the bill.

Senator Goedde and **Mr. Donovan** discussed the definition of the Fraternal Benefit Society and "managed care" contained in the insurance code and statute.

MOTION:

Senator Goedde moved that **H 358** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 408

Relating to Purchasing Division, was presented by Bill Burns, Administrator, Department of Administration (Department), Division of Purchasing (Division). **Administrator Burns** said that in 2013, the Idaho Legislature directed the Division to improve the development, management and reporting of contracts using best practices and to implement a training program for agency staff engaged in the procurement and contract management process. As part of implementing these directives, questions have arisen about the authority of the Division to implement these best practices for agencies and agency staff involved in the procurement process through rule. Rules will be issued through the regular administrative rules process, including a review by the Idaho Legislature, and will only apply to those agencies subject to the processes of the Division by Idaho Code § 67-5716(14). There is no fiscal impact.

Administrator Burns detailed the proposed legislation changes and said the words "of the office of the division" have been stricken so that the paragraph reads that "the administrator is authorized and empowered to formulate rules in the conduct of purchasing, subject to the approval of the director of the department of administration". **Administrator Burns** commented the Department believes this is consistent with legislative intent for the Division and consistent with past rule setting. As noted in the bill's Statement of Purpose, in 2013, the Idaho Legislature directed the Division to improve the development, management and reporting of contracts using best practices and broaden training programs for agency staff. The improvement plan was released to the House State Affairs Committee in January of this year. **Administrator Burns** noted that in addition, the Department received specific legislative intent language regarding the contracting process and its framework during Joint Finance-Appropriations Committee meetings. As part of implementing these directives, questions arose regarding the authority of the Division to implement these changes through rule for agencies involved in the procurement process. He emphasized that this legislation clarifies and eliminates ambiguity in law that the Division may establish rules in the conduct of purchasing and the contract administration and management process overseen by the Division. This change does not in any way change the way rules are currently promulgated in the conduct of purchasing and will apply only to those agencies subject to the processes of the Division per Idaho Code § 67-5716(14).

Senator Schmidt remarked he was trying to understand why some state departments use purchasing help from the Department and some do not. He pointed out page 2, line 11, and said he thought that what the legislation was saying was that rules can be made for purchasing for all departments. In response to the question, **Administrator Burns** said the legislation does not change purview over current agencies. He explained that the Division has no purview over the Governor's office and legislative agencies. **Senator Schmidt** wanted to know if the rules would still apply if an agency chose not to use the Division. **Administrator Burns** explained that if an agency was under the current purview, they would have to conduct purchasing under the current rules. The proposed legislation does not change the agencies within their purview.

Vice Chairman Patrick and **Administrator Burns** had a conversation about current purview by the Division over universities and colleges and the option for universities to withdraw from using the purchasing service. They discussed the idea that the universities still have to buy from state open contracts, even if they opt out.

Senator Cameron queried if the intention was that the rulemaking would be negotiated through the rulemaking process, what would be included. **Administrator Burns** explained that rulemaking would take place and gave an example of a threshold of \$5 million that would constitute a high value contract. This would be a service contract, and in that case, a new rule would be established, working with the agency to establish a Memorandum of Understanding (MOU) between the Division and the agency in terms of the contract administration, roles and responsibilities. The Division would still administer and do periodic reviews of the compliance and the validity of the contract over time. This would include best practice checklists, available through published Division manuals, and contract status reviews through better performance data. The Division's responsibility would be to provide advice as to how to proceed and enforce available remedies.

Senator Cameron asked Administrator Burns if he anticipated having rules that addressed the parameters and best practices for early renewal or the extension of a contract. **Administrator Burns** indicated that was not in the plan, but he was aware of a concern about renewals, even though they were not common. He commented that if there was a benefit to the State in terms of continuity of

service or there was cost containment, the Division would proceed with an early renewal. **Senator Cameron** suggested that it would be a good idea to include a best practices standard to address when an early renewal or extension takes place, in order to protect the Department.

Senator Cameron and **Administrator Burns** discussed best practices for an Request for Proposal (RFP) versus a Request for Information (RFI) as a valuable tool for the purchasing process. **Administrator Burns** explained that training has to be constant and there are manuals available to cover the contract life cycle.

Senator Cameron commented that the Committee had not had the opportunity, as part of the rules, to review the best practices and manuals. He cited an example of an RFP where four contractors bid, but the weight of the cost of the contract was a minor consideration in the determination of the award of the contract. The cost of the contract is more paramount than some of the other decisions, and he wanted to know whether that was something considered as a provision in the rulemaking process. **Administrator Burns** commented that anything is open to be discussed and considered. He understood Senator Cameron's point about the weight of the cost being much lower than the weight of the technical factors around the quality of the service being provided.

Senator Lakey asked Administrator Burns if he anticipated the rules surrounding the best practices to take more of a "you shall" or "you should" approach.

Administrator Burns replied that to provide consistency throughout the whole process, it would be a "you shall" approach. **Senator Lakey** referred to the certification of staff and asked if there would be a process and what would it entail.

Administrator Burns said his responsibilities indicate he can delegate purchasing authority to individuals that have the capability and understanding of the purchasing law and as currently written, those include certification, which have not been enforced yet, but would be a part of the rulemaking process.

MOTION:

Senator Cameron moved that **H 408** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

H 498

Relating to Film and TV Production Rebate Fund; Sunset Date - was presented by **Jeff Sayer**, Director, Department of Commerce (Department), for Representative Frank Henderson. **Director Sayer** said this legislation continues a program to grow the media production industry in Idaho. The Department will utilize the program as an economic stimulus to develop a media industry workforce by providing a post production rebate on specific Idaho expenditures on qualified media production projects. Currently, most states, including western states of Utah, Washington, Oregon, Wyoming and Montana, as well as 19 provinces and countries around the world are benefitting from similar film incentive programs that attract media production expenditures. Idaho is seeking to compete and build an industry in a global market. This legislation will sunset in 2020. **Director Sayer** gave a brief history of the Rebate Fund (Fund) and indicated that since the creation of the program, Idaho's economy was severely impacted by the downturn and was never able to be funded and fully utilized.

Director Sayer remarked that in 2014, with the improvement in Idaho's economy, it seems only prudent to retain this economic development program. By extending the sunset date, the private and government sector partnership will seek the desired path to reaching the goal of a \$100 million contribution to Idaho's economy.

This program would provide a 20 percent rebate on specific Idaho expenditures if at least \$200,000 is spent in Idaho and when the production hires Idaho crew members. In any production qualifying under the program, 35 percent of the total crew must be Idahoans. The maximum rebate per production is \$500,000. Depending on the size of the budget for the productions utilizing the rebate, \$10 to \$12 could be spent in Idaho for every \$1 rebated from the program. The film and television industry economic multiplier is considered to be between 1.5 and 2.8 in states with a mature industry. Currently, there is no money in the Fund and the account is dormant. **Director Sayer** said that Commerce will analyze the program and will not put any money into the account until there is a report.

Senator Schmidt commented that since the law has been on the books, he thought the analysis would have already been done. **Director Sayer** replied he has not had time to look at the program in depth and that he wanted more time to provide a final recommendation.

TESTIMONY:

Wayne Hoffman, President, Idaho Freedom Foundation, testified in opposition to this bill. He said that studies have proven that these types of programs don't work. He felt this was anti-free market and does not create jobs. He commented there have been studies done at the Mackinaw Center showing a multitude of problems related to cost concerns and other issues. States are trying to revamp those incentives. He commented this was corporate welfare and a great expense to taxpayers.

Senator Goedde reminded Mr. Hoffman that no money has been spent to date. **Mr. Hoffman** commented that was true, but urged the Committee to let the Fund sunset.

Director Sayer remarked that the incentive really does create jobs for the short term at over \$100 an hour. He said that the Department will study those states who have been successful with the film and television production incentives.

Senator Lakey asked if the code has some built-in items that have been discussed more frequently, such as reimbursement and job creation. **Director Sayer** commented that the fiscal notes give an overview that is built into statute. The Department may want to overlay some post-performance onto an earlier statute.

Senator Cameron remarked that the program has been in existence for the past five years, but that it had not been utilized. **Director Sayer** answered that no funds have gone into the account and there has been no backing for this incentive. He pointed out the list of movies and television productions is a synopsis of all of the projects that have been presented. **Senator Cameron** asked Director Sayer if the Department has requested funding. **Director Sayer** answered that the Department is asking that the sunset clause be extended to allow the Department an opportunity to finish their analysis in order to make a recommendation. He said he was anticipating the report would include both a request for funding and a series of changes that would be added to the statute that would strengthen the design of the incentive to make sure all current thinking was addressed.

MOTION: **Senator Goedde** moved that **H 498** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Keough will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 2:35 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 13, 2014

SUBJECT	DESCRIPTION	PRESENTER
HJM 6	A Joint Memorial Relating to the Patient Protection and Affordable Care Act (PPACA)	Representative Thomas Dayley
H 452	Relating to Sick Leave	Luci Willits, Chief of Staff, Department of Education
H 512	Court Determination Indigency - Health Exchange	Representative Christy Perry
H 545	Relating to Building Codes	Representative Jason Monks

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Ward-Engelking
Sen Guthrie	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 13, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

MOTION: **Senator Lakey** moved to approve the Minutes of February 25, 2014. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

HJM 6 **A Joint Memorial Relating to the Patient Protection and Affordable Care Act (PPACA)** was presented by Representative Thomas Dayley. **Representative Dayley** reported that the PPACA which was passed by Congress in 2010, imposes a variety of taxes on the healthcare industry. These taxes include a 2.3 percent medical device tax imposed on a manufacturer, producer or importer, based on the product sales price. An estimate of the tax burden over the next 10 years is approximately \$29 billion. In addition to being a potential deterrent of product innovation, these costs will ultimately be passed on to Idaho consumers. This legislation urges the Secretary of the United States Department of Health and Human Services to suspend the imposition of all PPACA taxes and to conduct a national review, which will provide a clear understanding of the impact.

There is no anticipated direct impact to the General Fund from any of the PPACA taxes. However, based on a March 2012 report, Idaho has approximately 2,000 employees directly employed by the advanced medical technology industry. The potential impact of the 2.3 percent medical device tax could be the loss of nearly 100 jobs and \$11.5 million of economic output. There would also be a substantial impact to Idahoans from all of the PPACA taxes.

Representative Dayley asked for the support of the Committee because it was important for the Idaho Legislature to make some statement to Congress.

Senator Guthrie voiced a concern about the loss of jobs, the tax on equipment and the PPACA. In response, **Representative Dayley** indicated the tax was strictly on the device.

MOTION: **Senator Guthrie** moved that **HJM 6** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

Relating to Sick Leave was presented by Luci Willits, Chief of Staff, Department of Education (Department). **Ms. Willits** said this bill would allow state department education employees who transfer to a school district or charter school to transfer up to 90 days of sick time and to allow district employees who transfer to a state education agency to have access to increased sick time for the purposes of retirement. There is no material impact on the Sick Leave Fund. **Ms. Willits** gave some background information and examples of when this may occur.

Ms. Willits detailed that currently, if a school district employee comes to work for the Department they may bring up to 90 days of their sick leave. However, if they leave the Department, they are not able to transfer it back to a school district. This creates a one-way street and can hurt an employee. This same thing does not occur if an employee chooses to move from school district to district. It truly is only an issue at the state level. She emphasized that consistency is important. She explained that employees who are hired by the Department from a school district cannot transfer their sick leave back to the district when they return under the Public Employee Retirement System of Idaho (PERSI). Likewise, those who are hired by a district from the Department cannot transfer their sick leave into the district under PERSI. Because of this, teachers are hesitant about applying for a job at the Department and those at the Department are hesitant about applying for a job at the district. **Ms. Willits** referred to page 1, Section 33, lines 24 through 27, "Any employee employed by a school district who was employed by a state educational agency during the current or prior school year shall be credited any unused sick leave accumulated during state employment up to a maximum of 90 days" and pointed out this allows a no harm clause.

Ms. Willits referred to page 3, lines 19 through 24, "For any employees of a state educational agency with unused sick leave that includes sick leave credited pursuant to Idaho Code § 33-1217, the credited state service requirements of subsection (2) (b) (i) through (iv) of this section shall not apply, but the maximum unused sick leave which may be considered shall be 600 hundred hours" and explained there was an individual the Department wanted to hire, but because of current legislation regarding the transfer of sick leave, that individual decided not to take the position.

Ms. Willits explained the second change in the proposed legislation allows individuals who come from a school district to work at the State to be able to use their sick leave for retirement purposes. Currently, a person would have to work for at least five years at the state level before being able to access their sick leave for the purposes of retirement. This is especially problematic as the term of an elected state superintendent is only four years.

She informed the Committee that the Department largely recruits its employees from Idaho school districts. Two obscure provisions in state law hinder recruitment for outstanding candidates to work for the State. The Department encourages individuals to gain valuable experience working at the state level and to take that experience back to districts. If individuals lose their sick time, they are not willing to come to work for the Department. The second provision disincentivizes anyone who is close to retirement from working at the Department, as it will cost them thousands of dollars in sick leave.

Ms. Willits commented that the House Committee heard testimony from two individuals who put a human face to this issue. She said that Liz Compton, an educator with 34 years of experience, testified before the House Committee how this provision hurt her. She worked for the Department and then went back to work for a school district where she lost all of her accumulated sick leave. **Ms. Willits** quoted from Ms. Compton's letter, "Since leaving the Department, I have shared

my personal experience with many of my colleagues who might ever consider full time employment at the Department. As a result of current code, state educational agencies are losing quality applicants and a wealth of experience, and districts are losing the benefit of professionals who have worked at a state level." **Ms. Willits** summarized a letter from Patricia O'Dell, regarding the transfer of sick leave. Ms. O'Dell was in favor of the proposed legislation.

Ms. Willits told the Committee that without this change, any educator who goes to work for the Department will lose their accumulated sick leave when returning to the district and they will have to start over. In addition, it would be very difficult to recruit a person who was close to retirement because they would have to work for the Department for at least five years in order to be eligible to use sick time for the purposes of retirement.

The Department worked with PERSI to craft the legislation. Director Don Drum testified at the House Committee and said there would be no material impact to the PERSI Sick Leave Fund. **Ms. Willits** remarked that the bill passed the House committee with no objection.

Senator Martin indicated he was concerned about the fiscal impact, and asked Ms. Willits to explain. **Ms. Willits** pointed out the impact was minimal upon PERSI, since out of the 140 employees for the Department, only half were educators. PERSI financial advisors were consulted and they indicated they were not worried.

Senator Lakey asked if Ms. Willits had received any input from the local districts regarding the fiscal impact of this bill. **Ms. Willits** answered that the Department worked with all of the stakeholders, and there would not be a financial burden.

MOTION:

Senator Goedde moved that **H 452** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry this bill on the floor of the Senate.

H 512

Relating to Court Determination Indigency - Health Exchange was presented by Representative Christy Perry. **Representative Perry** indicated the purpose of this legislation is to certify a subsidy received for health care coverage through the Idaho Health Insurance Exchange (Exchange) does not qualify as a factor for indigency determination in regards to the Public Defender System. There is no known fiscal impact to the State General Fund or other dedicated funds.

She outlined **H 512**, which she explained is a replacement of **H 432**. She explained the intent of this bill arises out of conversations within the Public Defender Interim Committee. The concern was that the current statutes regarding the services of a public defender beginning on line 15 of the bill, say that the court shall presume that the following persons are indigent unless such a determination is contrary to the interests of justice. This means that if an individual meets these certain criteria, they are automatically considered indigent and can receive the services of a public defender. She pointed out that line 21 clarifies that it is those individuals who receive or whose dependents receive, public assistance in the form of food assistance, health coverage and cash assistance. It is possible that the argument could be made that receipt of a subsidy from the Exchange could be considered public assistance in the form of health coverage. The intent of this legislation is to clarify that participation in the Exchange, which is an avenue for a health insurance subsidy, will not cause an automatic presumption of indigency.

Representative Perry indicated that the verbiage was changed regarding concerns raised by the American Civil Liberties Union (ACLU) and it was determined that their concerns were valid and should be addressed. This is due to the fact that there is some overlap. Currently, on line 19, a person who does not exceed 187 percent of the federal poverty level will qualify for a public defender. A person who is at 187 percent of the poverty level and under will also qualify for a subsidy on the Exchange. The intent is not to disqualify this person from qualifying for a public defender, but rather to disqualify those who receive a subsidy who are above the poverty level. Those individuals who make \$94,200 (for a family of four) and who are up to 400 percent above the federal poverty level, would not normally qualify under the current statutory criteria.

MOTION:

Senator Guthrie moved that **H 512** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Schmidt questioned 21(b) "Persons who receive, or whose dependents receive, public assistance pursuant to title 56, Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance" and asked if the Health Insurance Exchange was included. **Representative Perry** answered that this statement deals with public assistance and welfare, but she could not tell definitively.

The motion carried by **voice vote**. Senator Guthrie will carry this bill on the floor of the Senate.

H 545

Relating to Building Codes was presented by Representative Jason Monks. **Representative Monks** reported that this legislation would adopt the current version of both the Idaho Residential Building Code (IRBC) and the Idaho Energy Conservation Code (IECC) and identify those codes as the IRBC and the IECC. He remarked the simple part of this bill is the name change. It is important because it allows the State more flexibility in its adoption of new building and energy codes as they become available. He pointed out that this is dealing with the RBC and not the Commercial Building Code. This legislation allows the State to look at new international codes and determine which parts and portion they want to adopt. Any future additions or amendments to the code would be made through the State Building Code Board negotiated rulemaking process, which requires written notice and a public hearing. There is no impact to the General Fund.

Representative Monks pointed out that this legislation has the support of the Builders and Contractor's Association, the Idaho Association of Building Officials, Idaho Association of Realtors, and the Association of Idaho Cities. He disclosed there was some opposition from the Idaho Architects Board which had a problem with the process as opposed to what the legislation actually enacts. He talked about the remedy for the rulemaking process on page 3, Subsection 5, that "express written notice of the public hearings will be given" and it lists all of the organizations that must be notified, including the architects. He mentioned there was also a concern that Idaho would become different from the other states because we have our own Idaho code as opposed to adopting the International Building Code. He mentioned there is no universally accepted version of the codes. He pointed out that the State sets a baseline, but cities have the ability to adopt other codes of their choosing. Because there is a "hodgepodge" of codes within the State as well as outside the State, this was not a change that was going to cause any undue burden.

Vice Chairman Patrick asked if there were any additional costs for changing manuals. **Representative Monks** replied that an additional cost is not anticipated, only the cost for reprinting the code. Some inappropriate areas of code have been exempted through the rulemaking process. Codes that are being developed are specific to Idaho. He commented there would be a significant cost savings if Idaho chooses not to update code in three years when the International Code comes out. **Vice Chairman Patrick** and **Representative Monks** discussed having inserts available reflecting the changes instead of code books in order to save money.

Senator Lakey commented he liked the approach and asked if Idaho was going to maintain a set of books and where could they be purchased. **Representative Monks** said he could not answer that question and deferred to the experts.

TESTIMONY:

Leon Duce, representing the Association of Idaho cities, testified in support of the bill.

Tyler Mallard, representing the Idaho Building Contractors' Association, indicated the codes would be available through the International Code Council (ICC). He testified in support of the bill.

Steve Martinez, Idaho Building Contractors' Association (Association), indicated the ICC prints four different codes, namely, the International Residential Code (IRC), the International Electrical Code (IEC), the IECC, and the International Existing Building Code (IEBC) or remodeling code. He emphasized this bill is only talking about the IRC and the IECC. The Association has a goal of making the book less expensive by taking out the parts that are not used because they are covered somewhere else. The State already runs under its own plumbing, electrical, fuel, gas and mechanical codes. He pointed out that the last code change was approximately 300 pages long since the rules were rewritten.

Dan Hunter, building official for Canyon County, a member of the State Building Code Board, President of the Idaho Building Officials, indicated the Building Code Board (Board) saw this legislation prior to the hearing before the House Committee. The Board would have liked for the legislation to go through the negotiated rulemaking process, even though there is no requirement to do so. The Board supported the name change of the codes. He clarified that cities do not have different codes and that is outlined in statute by the Board. Local jurisdictions have the ability to amend the code and may differ from city to city.

Chairman Tippetts asked if the Board had taken a position on this legislation. **Mr. Hunter** replied that there was no formal position taken, but there was a concern voiced about the process.

MOTION:

Vice Chairman Patrick moved that **H 545** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion.

Senator Martin indicated he was comfortable with calling the code "Idaho Code".

Senator Schmidt disclosed he was against the legislation because he wanted to have the comfort that we are serving Idaho.

The motion carried by **voice vote**. **Senator Schmidt** wanted to be recorded as voting "nay." Senator Guthrie will carry this bill on the floor of the Senate.

Chairman Tippetts commented that this may be our last meeting. He thanked the Committee for being exceptional. They had been very thorough and thoughtful, and he appreciated all of their hard work.

**HONORING OF
PAGE:**

Chairman Tippetts commended page Lindsay Bolinder and said she had done an excellent job and thanked her for her work. He asked her to tell the Committee what she has learned from this experience and what her plans were going forward. **Lindsay Bolinder** remarked that being a page was such a great experience for her and she was sad the session was almost finished. She described how it was different to learn about government in a textbook, but another thing to actually experience the inner workings "hands-on." She mentioned she learned how people worked together professionally and wanted to apply that knowledge to her future. Going forward, she will be going to Utah State and wants to become a pediatric nurse. She thanked the Committee for the experience.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:18 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary